MONTGOMERY'S MANUAL OF FEDERAL PROCEDURE

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MONTGOMERY'S MANUAL

OF

FEDERAL PROCEDURE

By

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DEDICATION.

To My Father, C. S. Montgomery, of the Omaha Bar, in token of affectionate esteem, and admiration for his learning in the subject herein treated.

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PREFACE

This manual contains in *one volume,* of convenient size for office or court room use, verbatim all the Federal statutes and court rules (except district courts) relating to the practice and procedure of the ordinary law, equity, or criminal case in the Federal courts, with many forms and suggestions as to the steps to be taken in such cases.

Many statutes on procedure are not included in the new Judicial Code,—particularly statutes of limitations, evidence, witnesses, depositions, and costs and fees. These are included verbatim in the text, as well as the provisions of the Judicial Code annotated, and with amendments to date. The Judicial Code is also set out in its original form in the Appendix, with references to the places where its various provisions may be found in the text.

The new equity rules are set out and annotated in the Appendix, and quoted verbatim in the text whenever bearing on the subject thereof.

The Supreme Court rules and rules of all the Circuit Courts of Appeals are set out in the Appendix, and, where necessary, are quoted and referred to in the text.

The verbatim quoting of the statutes and rules is in such form that there can be no confusion as to what is and what is not a part of the statute or rule quoted.

The forms are scattered through the work in juxtaposition to the laws or rules on which they are based.

There are threefold, and in many instances fourfold, references to other works, authoritative publications containing such statutes or rules. With the assistance of the Manual, the practitioner may, with the present law in convenient form at hand, quickly refer to its former condition, and note the similarities or changes therein. The references and annotations will also be useful in working out some of the finer points of practice, the work being designed as a guide book rather than an exhaustive treatise.

I am gratefully indebted to Mr. Claire T. Van Etten, of the Los Angeles Bar, for Chapters 11, 28, 39, 40, and 41, relating to appellate jurisdiction and procedure of the Supreme Court and Circuit Court of Appeals, and also Chapter 37, on "Receivers and Injunctions," and for other valuable assistance in the work. I am likewise indebted to Mr. Paul Valles, of the Los Angeles Bar, for the annotations to the Judicial Code, the arrangement of the rules of the Circuit Court of Appeals in the Appendix, and for much other useful aid in the preparation of the work.

CHARLES C. MONTGOMERY.

Los Angeles, California,
May 1, 1914.

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MONTGOMERY'S MANUAL OF FEDERAL PROCEDURE.

CHAPTER 1.

FEDERAL COURTS AND THEIR JURISDICTION IN GENERAL.

Sec.

1. The Place of the Federal Courts in Our Judicial System.
2. Judicial Power under the United States Constitution.
3. Federal Courts Enumerated.
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§ 1. The Place of the Federal Courts in Our Judicial System. In framing the national Constitution the theory prevailed that the national government should have only such powers as were expressly given by, or necessarily implied from, the Constitution, and that all other sovereign powers were retained by the several states.

This theory prevailed in providing for the national judiciary. Each state had its own system of courts. These courts had a general jurisdiction over persons and things within their territorial limits. It was determined that this jurisdiction be kept intact, except where the national courts should be given control, expressly or by necessary implication.

In the nature of things, controversies arising under the Federal Constitution, laws, and treaties, should be determinable in a national court of last resort. The establishment of such court insured uniformity of decision and gave national sanction thereto.

The same considerations apply to cases affecting ambassadors, other public ministers and consuls, admiralty and maritime cases, and controversies to which the United States or states might be parties.

As a result of the doctrine of state sovereignty, which flourished so strongly when our Constitution was adopted, there also existed a necessity for an impartial tribunal of national authority to determine controversies involving diverse citizenship. This necessity still exists because of the natural tendency to favor a citizen opposing a nonresident, particularly if his opponent be a foreign corporation.

The framers of the Constitution provided for such a court of last resort, and wisely left the development of a system of inferior courts to be determined by Congress as expediency might require.

> § *1, art. 3, U. S. Const.* "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time establish."

Generally speaking, the place of the Federal courts in our two-fold judicial system—Federal and state—is (1) *to give uniformity and national dignity to the determination of Federal or national questions, and* (2) *to furnish impartial tribunals in cases of diverse citizenship.*

§ 2. Judicial Power under the United States Constitution. The Constitution in defining the judicial power of the Federal courts recognized both classes of cases mentioned in the preceding section, (1) those involving Federal questions and national dignity, and (2) those where there might be a diversity of citizenship.

> *Cl. 1, § 2, art. 3, U. S. Const.* "The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority, to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between citizens

> of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects."

On account of the tender consideration of states' rights, the above provision was modified by the 11th Amendment to the Constitution as follows:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

§ 3. Federal Courts Enumerated. *District courts.* Each state in the United States constitutes one or more Federal judicial districts in each of which is located a Federal district court. These courts are the courts of general, original jurisdiction. The consideration of their jurisdiction, practice, and procedure occupies the first and larger part of this book. The other inferior and appellate courts are treated respectively in separate chapters devoted to each.

The *court of claims,* with five judges, sits at Washington to take jurisdiction of claims against the United States other than pensions and sounding in tort.

The *commerce court,* with five judges, sits at Washington and may sit in other places. It has authority to enforce orders (except for payment of money) of the Interstate Commerce Commission, but not by forfeitures, penalties, or criminal remedies. It also has power to enjoin, annul, or suspend orders of said Commission. By the urgent deficiencies appropriations act of October 22, 1913, 38 Stat. at L. pp. 219, 221, quoted in our Appendix, at the head of chapter 9, Judicial Code, the commerce court was abolished, and its jurisdiction transferred to the district court.

The *court of customs appeals,* with five judges, sits at Washington and may also sit in the several circuits. It reviews decisions of the board of general appraisers under the customs and duties or tariff laws.

The *circuit court of appeals* consists of three or more judges

for each circuit. A justice of the supreme court is also assigned to each circuit, and district judges may be assigned to sit. These courts have final appellate jurisdiction over the district courts within their respective circuits, except where a direct appeal is allowed exclusively to the supreme court or on certification of a question from the circuit court of appeals to the supreme court.

The *supreme court,* with nine judges, sits at Washington. It has original jurisdiction of matters in which a state is a party, and of cases brought by ambassadors or other public ministers or in which a consul or vice consul is a party. It has original and exclusive jurisdiction of cases between states and between a state and the United States, and of cases against ambassadors, other public ministers, and their domestics. It has appellate jurisdiction on writ of error or appeal from the district courts in certain cases, and on writ of error from the courts of last resort of the several states in certain cases. It has appellate jurisdiction of certain cases from the circuit court of appeals, court of claims, commerce court, from United States district court and supreme court of Porto Rico, the supreme court of Hawaii, district court of Alaska, the supreme court of the Philippine Islands, the court of appeals of the District of Columbia, and certain cases where a territory has become a state.

§ 4. District Courts—Jurisdiction—In General. Although the jurisdiction of the Federal courts is limited, the number and importance of cases involving some ground of Federal jurisdiction is considerable and is constantly increasing.

By the Judicial Code which took effect January 1, 1912, the United States circuit courts were abolished and the district courts were made the Federal courts of general, original jurisdiction.

As one or more of these Federal district courts is located in every state in the United States, the general practitioner should be concerned with the scope of its jurisdiction and mode of procedure. (1) Such court may be available to him as the best or most convenient court in which to bring a suit; (2) it may interfere with the trial of a case brought by him in the state court by his adversary's removal of the case thereto; (3) on account of the

locality or bias of a state court, the practitioner may find it desirable to remove the suit for a defendant to the Federal court; (4) he may be called upon to defend a suit brought in the Federal court; (5) he may be employed to pass upon a title litigated in the Federal courts.

The *original jurisdiction* of the Federal district court is defined in § 24 of the Judicial Code. Part of that jurisdiction is *exclusive* of the state courts as coming under the provision of § 256 of the Judicial Code, and part is *concurrent* with that of the state courts; and in all cases of original concurrent jurisdiction the suit, if brought in the state court, may be removed under certain conditions to the Federal district court for the proper district. These subjects are treated in chapter 6, entitled, "District Court—Jurisdiction, Original and Appellate," and in chapter 10, entitled, "Removal of Causes—Jurisdiction and Procedure."

§ 5. The Federal System Is Double—Legal and Equitable. In the Federal courts there are two systems of pleadings and practice, *viz.*, law and equity. The same judge may sit at one time as a law judge and try a case, with a jury to determine questions of fact, and at another time he may sit as a chancellor or equity judge determining the questions of law and fact without a jury, unless he calls one in an advisory capacity. As an equity judge he will not give an equitable remedy if the remedy at law is adequate, but under new Equity Rule 22, he may transfer the case to the law side, if improperly brought on the equity side, instead of dismissing as formerly.

The Federal Constitution, in various provisions, recognizes and fixes the distinction between common law and equity, especially in the 7th Amendment, preserving the right of trial by jury in suits at common law where the value in controversy shall exceed $20.

This double system was inherited from England, where formerly there were separate courts of law and equity, with a chancellor or equity judge sitting on the equity bench and a common-law judge on the common-law bench.

In most of the states to-day the same form of action is used in an equity case as in a law case and the system is a blending of law and equity. But the main distinctions between law and equity

are nevertheless maintained: (1) Preserving the right to trial by jury in law cases; (2) refusing to give equitable remedies where the legal remedies of possession or compensation are adequate; and (3) enforcing equitable decrees in certain cases by process for contempt for neglect or refusal to obey.

The reason for the original separation of the two systems is historical and not in the essential nature of these branches of the law, but the distinction will remain an essential element of our system, even in the blended or reform procedure, so long as the right to trial by jury is preserved for common law cases.

§ 6. Differences in Procedure at Law and in Equity in the Federal Courts. In the Federal courts an action at law differs from a suit in equity in a number of particulars, in the main as follows:

(1) *Pleading:* at law, conforms "as near as may be" to state practice; in equity is governed by equity rules. (2) *Production of proof:* at law, depositions may be taken at any time after filing the complaint to the time of trial; in equity, as a general rule only after issue joined and within a limited time. (3) *Trial:* at law, defendant entitled to a jury to determine issues of fact; in equity, issues both of law and fact are determined by the judge. (4) *Relief granted:* at law, compensation or possession; in equity, preventive, specific, foreclosure, receiverships and all other remedies except legal, but including compensation and possession as incidental to the equitable relief sought. Equitable remedies are not given where legal remedies are adequate and complete. (5) *Enforcing final orders:* a judgment at law is enforceable by execution and writ of assistance; equitable decree by execution for money judgments, by contempt proceedings for specific or preventive relief when necessary under Equity Rule 8, and writ of assistance for possession under Equity Rule 9. (6) *Review in appellate court:* at law by writ of error; in equity by appeal.

§ 7. Actions at Law—Wherein Conform to State Practice. Generally speaking, an action at law is an action wherein is sought the remedy of possession or compensation without any equitable elements requiring the interposition of equity.

Under §§ 914 et seq., R. S., Comp. Stat. 1901, p. 684, 4 F. S. A. 563, the conduct of an action at law conforms "as near as may be" to that existing at the time in like causes in the courts of record of the state within which such district court is held.

Pleading and practice in a law case in the Federal courts are governed by the state statutes and state court rules, except in those matters where there has been congressional action by statutory enactments, or which involve the judge's personal administrative powers, or where the Federal district court rules have established such minor changes as the difference in jurisdiction and organization of the state or Federal courts may require.

In addition to a good cause of action there must always be an affirmative showing (1) of grounds of Federal jurisdiction; (2) that the requisite amount in controversy is involved, which in cases of concurrent jurisdiction with the state courts, must exceed, exclusive of interest and costs, the sum or value of $3,000, except in certain cases set out § 24, Judicial Code; (3) that the action is one at law as distinguished from equity; and it must also appear, (4) that the venue of the action is properly laid under the Federal statutes.

§ 8. A Suit in Equity—Rules Governing Procedure. Suits in equity are governed by the equity rules promulgated by the United States Supreme Court, with such minor variations not inconsistent with those rules as the district judges, with the concurrence of a majority of the circuit judges for the circuit, may, from time to time, establish under Equity Rule 79.

In a suit in equity, as in an action at law, regard must be paid to (1) the ground of Federal jurisdiction, (2) that there is the requisite amount in controversy, (3) that the cause is equitable as distinguished from legal, (4) and the proper venue.

§ 9. A Blended Federal Procedure a Future Possibility. Considering the simple practice and procedure established for suits in equity by the equity rules that went into effect February 1, 1913, there seems to be no good reason why there should be maintained any differences between actions at law and suits in equity in the Federal courts, if Congress should see fit to amend

§ 914, Revised Statutes, so as to allow the procedure at law to be governed by Supreme Court rules.

Very few rules would be required for a law action additional to those now existing for the conduct of a suit in equity. It would be necessary to make provision (1) to preserve the right of a jury trial for questions of fact in law actions; (2) to adjust the giving of equitable remedies and legal remedies in the same suit or separate suits determinable at the same time; and (3) to provide for the enforcement of state statutory remedies wherein same may not be conformable to the Federal practice. The adoption of such a system would be a strong influence towards uniformity and simplicity in state systems.

§ 10. Summary—Differences of Practice and Procedure in Federal and State Courts. The differences between Federal and state practice and procedure are due: (1) to the limited nature of Federal jurisdiction requiring (a) some ground of Federal jurisdiction to be involved in all actions in the Federal court, and (b) that in certain cases the amount in controversy must exceed $3,000 exclusive of interest and costs; (2) to the distinctions maintained in Federal courts between actions at law and suits in equity; (3) to the Federal statutes relating to venue.

It will be seen from the above that there are always four points for consideration in determining the jurisdiction and consequent procedure in actions brought in Federal courts.

First, whether or not a Federal ground of jurisdiction is involved, because some such ground must appear in addition to the facts necessary generally to constitute a cause of action. These grounds of Federal jurisdiction are treated in chapters 7 and 8, respectively entitled, "Federal Questions—Ground of Jurisdiction;" "Diverse Citizenship—Ground of Federal Jurisdiction."

Second, whether or not there is the requisite amount in controversy. Congress, having power in its discretion to establish inferior courts, necessarily has power to define their jurisdiction. In defining the jurisdiction of the district court, the Federal statutes have fixed a limitation based on the amount in controversy. This subject is treated in chapter 9, entitled, "Amount in Controversy as Affecting Jurisdiction."

Third, whether or not the suit is at law or in equity. A separate system of procedure has been rendered necessary in Federal equity suits, because a number of states have adopted a blended form of procedure, combining legal and equitable causes of action and defenses, while the Federal system has maintained the distinctions between law and equity. Under the Federal practice, legal and equitable causes are not permitted to be united in the same suit, nor are equitable defenses, except in a few cases, permitted to be set up in law actions. Chapters 18 to 28 inclusive give the main proceedings for an action at law in the Federal court, and chapters 29 to 41 inclusive give the procedure for a suit in equity in the Federal court.

Fourth, certain restrictions have been adopted in the Federal courts respecting the place of trial of actions, or venue. These restrictions are not jurisdictional if waived by the parties, but may defeat the action. On removal, timely objection on this ground may cause the case to be remanded. This subject is treated in chapter 5, entitled, "Venue of Actions in the District Court —Territorial Jurisdiction."

The statutory provisions respecting jurisdiction, original and on removal, the amount or value required to be in controversy and the place of trial of actions, are summarized under the several jurisdictional headings of § 24, Judicial Code, and placed in chapter 12, entitled, "Summaries—Original Jurisdiction, Removal, Amount, Venue—for the Several Matters of District Court Cognizance."

§ 11. Why a Special Study of Federal Procedure Required. *Federal equity procedure* is now wonderfully simplified under the equity rules which took effect February 1, 1913, and the Judicial Code which took effect January 1, 1912.

There will be but little difficulty in mastering the present equity procedure, if the practitioner will bear in mind the points mentioned in the preceding section respecting jurisdiction, Federal and equitable, amount in controversy and venue.

But special study of the subject is required because the Federal equity procedure is a complete, separate system differing in many vital particulars from state systems.

In chapter 29, entitled, "A Suit in Equity—Summary," are set out the main points in the conduct of a suit in equity and the time within which each step must be taken.

For an action at law in the Federal court, the practitioner must search out those matters wherein the Federal statutes, Federal court rules and decisions have changed the mode of procedure from that in the state court.

In chapter 18, post, "An Action at Law—Summary," it is endeavored to indicate the main points in conformity and those not in conformity with state practice.

§ 12. Desirability of Special Study of Federal Procedure. The number of cases coming under Federal jurisdiction, particularly the concurrent jurisdiction of the Federal district court, is greatly increasing with the consolidation and combination of businesses and with the growth of national control of matters formerly left to state legislation.

Time devoted to the study of Federal jurisdiction and procedure will be well spent in view of the strong tendency toward national control of numerous matters affecting the different business interests in every community.

A special study of Federal procedure is required if the lawyer desires to be equipped to handle business of importance. The larger the interests involved, the greater liability there is of such matters being in litigation in the Federal rather than the state court, either by being brought there originally, or on removal. The necessity is undoubtedly increasing for the state practitioner to become conversant with the judicial system, jurisdiction and procedure not only of his own state (and to some extent of other states), but also of the nation.

CHAPTER 2.

DISTRICT COURTS—ORGANIZATION—OFFICERS.

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21. Judges—General Statement.
22. Number of District Judges in the Several Districts.
23. Division of Business in Districts with More than One Judge.
24. Assigning Another District Judge in Case of Disability of Regular Judge.
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28. Circuit Judge, When to Act as District Judge.
29. Duties and Powers of Judges Designated in Place or Aid of District Judges.
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36. Deputy Marshals.
37. Marshal's Field Deputies.
38. Criers and Bailiffs.
39. United States District Attorney.
40. Assistant District Attorney.
41. Court Commissioners, Receivers, Masters in Chancery—General Statement.
42. Court Commissioners.

§ 20. General Statement. In every state in the United States there is at least one Federal judicial district[1] with not less than one district judge for each district except in Alabama, Mississippi, South Carolina, and Tennessee.[2]

Besides the judge, there are: a clerk, deputy clerks, a marshal, deputy marshals, field deputy marshals, bailiffs, court crier, a

[1] Ch. 4. [2] § 22.

district attorney, assistant district attorneys, and sometimes counsel to aid the district attorney.[3]

There are also court commissioners, receivers, masters in chancery, and officers appointed under the bankruptcy laws not covered in this work.[4]

§ 21. Judges—General Statement. Except in Alabama, Mississippi, South Carolina, and Tennessee, there is always at least one district judge for every district.[5] Sometimes there is more than one judge, in which case it is necessary that there be a division of business.[6]

Often it is necessary to call in outside district judges in case of disability of regular judge,[7] or accumulation of business, or when otherwise necessary to aid a district judge.[8] In some cases the chief justice may be required to designate such additional judge,[9] or a new appointment and revocation of the old appointment may be required.[10] In some cases it may even be necessary to call in one of the circuit judges to serve as district judge.[11]

It is also often necessary to obtain an outside judge where the incumbent is interested or related to the parties,[12] or where he has a personal bias or prejudice.[13]

Where an outside judge serves, his acts have the same effect and validity as those of the district judge of the district.[14]

§ 22. Number of District Judges in the Several Districts.

§ 1, Judicial Code,[a] *36 Stat. at L. 1087, Comp. St. 1911, p. 129, 1912 Supp. F. S. A. v. 1, p. 132.* "In each of the districts described in chapter 5,[15] there shall be a court called a district court, for which there shall be appointed one judge, to be called a district judge; except that in the northern dis-

[3] § 32. [4] § 41. [5] § 22. [6] § 23.
[7] § 24. [8] § 25. [9] § 26. [10] § 27.
[11] § 28. [12] § 30. [13] § 31. [14] § 29.
[15] Ch. 4, post.

[a] "All acts and parts of acts authorizing the appointment of United States circuit or district judges, . . . enacted prior to February first, nineteen hundred and eleven," repealed by § 297, Judicial Code. Circuit courts abolished by § 289 of the Judicial Code. Judicial Code does not repeal expedition act of Feb. 11, 1903, 32 Stat. at L. 823, Comp. St. 1911, p. 1383, 10 F. S. A. 199. Ex parte United States, 226 U. S. 420, 57 L. ed. 281, 33 Sup. Ct. Rep. 170.

trict of California, the northern district of Illinois, the district of Maryland, the district of Minnesota, the district of Nebraska, the district of New Jersey, the eastern district of New York, the northern and southern district of Ohio, the district of Oregon, the eastern and western district of Pennsylvania, and the western district of Washington, there shall be an additional district judge in each, and in the southern district of New York, three additional district judges: *Provided,* That whenever a vacancy shall occur in the office of the district judge for the district of Maryland, senior in commission, such vacancy shall not be filled, and thereafter there shall be but one district judge in said district: *Provided further,* That there shall be one judge for the eastern and western districts of South Carolina, one judge for the eastern and middle districts of Tennessee, and one judge for the northern and southern districts of Mississippi: *Provided further,* That the district judge for the middle district of Alabama shall continue as heretofore to be a district judge for the northern district thereof. Every district judge shall reside in the district or one of the districts for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor."

§ 23. Division of Business in Districts with More than One Judge.

§ *23, Judicial Code,*[b] *36 Stat. at L. 1090, Comp. St. 1911, p. 134, 1912 Supp. F. S. A. v. 1, p. 138.* "In districts having more than one district judge, the judges may agree upon the division of business and assignment of cases for trial in said district; but in case they do not so agree, the senior circuit judge of the circuit in which the district lies shall make all necessary orders for the division of business and the assignment of cases for trial in said district."

§ 24. Assigning Another District Judge in Case of Disability of Regular Judge.

§ *13, Judicial Code,*[c] *36 Stat. at L. 1089, Comp. St. 1911, p. 131, 1912 Supp. F. S. A. v. 1, p. 135.* "When any district judge is prevented, by any disability, from holding any stated

[b] Drawn from act of Feb. 20, 1907, ch. 2073, § 2; Act of March 2, 1907, ch. 2575, § 2, 34 Stat. at L. 1253; Act of March 2, 1909; and the act of Feb. 24, 1910, ch. 56, § 3, 36 Stat. at L. 202.

[c] Combining § 591, R. S., Rose's Code, § 172, Foster's Fed. Prac. 4th ed.) pp. 682, 683, Comp. St. 1901, p. 480, 4 F. S. A. 675, and amendment there-

or appointed term of his district court, and that fact is made to appear by the certificate of the clerk, under the seal of the court, to any circuit judge of the circuit in which the district lies, or, in the absence of all the circuit judges, to the circuit justice of the circuit in which the district lies, any such circuit judge or justice may, if in his judgment the public interests so require, designate and appoint the judge of any other district in the same circuit to hold said court, and to discharge all the judicial duties of the judge so disabled, during such disability. Whenever it shall be certified by any such circuit judge or, in his absence, by the circuit justice of the circuit in which the district lies, that for any sufficient reason it is impracticable to designate and appoint a judge of another district within the circuit to perform the duties of such disabled judge, the chief justice may, if in his judgment the public interests so require, designate and appoint the judge of any district in another circuit to hold said court and to discharge all the judicial duties of the judge so disabled, during such disability. Such appointment shall be filed in the clerk's office, and entered on the minutes of the said district court, and a certified copy thereof under the seal of the court shall be transmitted by the clerk to the judge so designated or appointed."

§ 25. Assigning Additional Judge in Case of Accumulation of Business or in Aid of District Judge.

§ *14, Judicial Code,*[d] *36 Stat. at L. 1089, Comp. St. 1911, p. 132, 1912 Supp. F. S. A. v. 1, p. 135.* "When, from the accumulation or urgency of business in any district court, the public interests require the designation and appointment hereinafter provided, and the fact is made to appear, by the certif-

to, 36 Stat. at L. 1417, 1909 Supp. F. S. A. 293, which are repealed by § 297, Judicial Code.

Filing the paper is not necessary to the validity of the appointment of the judge. National Home of Soldiers v. Butler, 33 Fed. 374. This power does not extend to the case of a vacancy. 9 Op. Atty. Gen. 131. See § 603, R. S. Appointment not subject to collateral attack. Ball v. United States, 140 U. S. 118, 35 L. ed. 377, 11 Sup. Ct. Rep. 761.

[d] Drawn from § 592, R. S., Rose's Code, § 173, Foster's Fed. Prac. (4th ed.) pp. 682, 683, Comp. St. 1901, p. 481, 4 F. S. A. 676, which section is repealed by § 297, Judicial Code. In general, McDowell v. United States, 159 U. S. 596, 40 L. ed. 271, 16 Sup. Ct. Rep. 111. Not subject to collateral attack. Ex parte United States, 226 U. S. 420, 57 L. ed. 281, 33 Sup. Ct. Rep. 170. See In Re Manning, 139 U. S. 504, 35 L. ed. 264, 11 Sup. Ct. Rep. 624; Ball v. United States, 140 U. S. 118, 35 L. ed. 377, 11 Sup. Ct. Rep. 761. McDowell v. United States, 159 U. S. 596, 40 L. ed. 271, 16 Sup. Ct. Rep. 111. As to filing of appointment, see National Home for Soldiers v. Butler, 33 Fed. 374.

icate of the clerk, under the seal of the court, to any circuit judge of the circuit in which the district lies, or, in the absence of all the circuit judges, to the circuit justice of the circuit in which the district lies, such circuit judge or justice may designate and appoint the judge of any other district in the same circuit to have and exercise within the district first named the same powers that are vested in the judge thereof. Each of the said district judges may, in case of such appointment, hold separately at the same time a district court in such district, and discharge all the judicial duties of the district judge therein."

§ *17, Judicial Code,*[e] *36 Stat. at L. 1089, Comp. St. 1911, p. 133, 1912 Supp. F. S. A. v. 1, p. 136.* "It shall be the duty of the senior circuit judge then present in the circuit, whenever in his judgment the public interest so requires, to designate and appoint, in the manner and with the powers provided in section fourteen, the district judge of any judicial district within his circuit to hold a district court in the place or in aid of any other district judge within the same circuit."

§ 26. Designation of Additional Judge by Chief Justice.

§ *15, Judicial Code,*[f] *36 Stat. at L. 1089, Comp. St. 1911, p. 132, 1912 Supp. F. S. A. v. 1, p. 136.* "If all the circuit judges and the circuit justice are absent from the circuit, or are unable to execute the provisions of either of the two preceding sections, or if the district judge so designated is disabled or neglects to hold the court and transact the business for which he is designated, the clerk of the district court shall certify the fact to the Chief Justice of the United States, who may thereupon designate and appoint in the manner aforesaid the judge of any district within such circuit or within any other circuit; and said appointment shall be transmitted to the clerk and be acted upon by him as directed in the preceding section."

[e] Superseding § 596, R. S., Rose's Code, § 177, Foster's Fed. Prac. (4th ed.) pp. 682, 683, Comp. St. 1901, p. 482, 4 F. S. A. 677, which section is repealed by § 297, Judicial Code.

McDowell v. United States, 159 U. S. 596, 40 L. ed. 271, 16 Sup. Ct. Rep. 111. In general, Ball v. United States, 140 U. S. 118, 35 L. ed. 377, 11 Sup. Ct. Rep. 761.

[f] Superseding § 593, R. S., Rose's Code, § 174, Foster's Fed. Prac. (4th ed.) pp. 682, 683, Comp. St. 1901, p. 481, 4 F. S. A. 676, which section is repealed by § 297, Judicial Code. In general, Ex parte N. K. Fairbanks Co. 194 Fed. 978.

§ 27. Change of Appointment.

§ 16, Judicial Code,[g] *36 Stat. at L. 1089, Comp. St. 1911, p. 132, 1912 Supp. F. S. A. v. 1, p. 136.* "Any such circuit judge, or circuit justice, or the Chief Justice, as the case may be, may, from time to time, if in his judgment the public interests so require, make a new designation and appointment of any other district judge, in the manner, for the duties, and with the powers mentioned in the three preceding sections, and revoke any previous designation and appointment."

§ 28. Circuit Judge, When to Act as District Judge.

§ 18, Judicial Code,[h] *36 Stat. at L. 1089, Comp. St. 1911, p. 133, 1912 Supp. F. S. A. v. 1, p. 137.* "Whenever, in the judgment of the senior circuit judge of the circuit in which the district lies, or of the circuit justice assigned to such circuit, or of the Chief Justice, the public interest shall require, the said judge, or associate justice, or Chief Justice, shall designate and appoint any circuit judge of the circuit to hold said district court."

Amendment of act October 3, 1913, ch. 18, 38 Stat. at L 203. § 18 of the Judicial Code is amended by adding the following: "Whenever it shall be certified by the senior circuit judge of the second circuit, or, in his absence, by the circuit justice of said circuit, that on account of the accumulation or urgency of business in any district court in said circuit it is impracticable to designate and appoint a sufficient number of district judges in other districts within said circuit to relieve such accumulation or urgency of business, the Chief Justice may, if in his judgment the public interests so require, designate and appoint the judge of any district court in another circuit to hold a district court within said second circuit, and to have and exercise within said district to which he is so assigned the same powers that are vested in the judge thereof: *Provided*, That said judge so designated and appointed shall have consented, in writing, to such designation and appointment: *And provided further*, That the senior circuit judge of the circuit within which such judge so designated and appointed resides shall certify, in

[g] Superseding § 593, R. S., Rose's Code. § 175, Foster's Fed. Prac. (4th ed.) pp. 423, 682, 683, Comp. St. 1901, p. 481, 4 F. S. A. 676, which section is repealed by § 297, Judicial Code. In general, Ex parte N. K. Fairbanks Co., supra.

[h] This section is new legislation.

writing, that the business of the district of such judge will not suffer thereby. Such appointment shall be filed in the clerk's office and entered on the minutes of said district court, and a certified copy thereof, under the seal of the court, shall be transmitted by the clerk to the judge so designated and appointed. Each of said district judges may, in case of such appointment, hold separately, at the same time, a district court in such district, and discharge all of the judicial duties of the district judge therein."

§ 29. Duties and Powers of Judges Designated in Place or Aid of District Judges.

§ 19, Judicial Code,[1] *36 Stat. at L. 1090, Comp. St. 1911, p. 133, 1912 Supp. F. S. A. v. 1, p. 137.* "It shall be the duty of the district or circuit judge who is designated and appointed under either of the six preceding sections, to discharge all the judicial duties for which he is so appointed, during the time for which he is so appointed; and all the acts and proceedings in the courts held by him, or by or before him, in pursuance of said provisions, shall have the same effect and validity as if done by or before the district judge of the said district."

§ 30. Outside Judge in Case of Interest or Relationship of Incumbent.

§ 20, Judicial Code,[1] *36 Stat. at L. 1090, Comp. St. 1911, p. 133, 1912 Supp. F. S. A. v. 1, p. 137.* "When it appears that the judge of any district court is in any way concerned in interest in any suit pending therein, or has been of counsel or is a material witness for either party, or is so related to or connected with either party as to render it improper, in his opinion, for him to sit on the trial, it shall be his duty, on application by either party, to cause the fact to be entered on the records of the court; and also an order that an authenticated copy thereof shall be forthwith certified to the senior circuit judge for said circuit then present in the circuit; and thereupon such proceedings shall be had as are provided in section fourteen (quoted § 25, infra)."

[1] Drawn from § 595, R. S., Rose's Code, § 176, Foster's Fed. Prac. (4th ed.) pp. 682, 683, Comp. St. 1901, p. 482, 4 F. S. A. 676, which section is repealed by § 297, Judicial Code.

[1] Superseding § 601, R. S., Foster's Fed. Prac. (4th ed.) pp. 682, 969, Comp. St. 1901, p. 482, 4 F. S. A. 678, which section is repealed by § 297, Judicial Code. As to judge being interested in suit, see Spencer v. Lapsley, 61

§ 31. Designation of Another Judge on Affidavit of Personal Bias or Prejudice of Incumbent Filed.

§ 21, Judicial Code,[k] *36 Stat. at L. 1090, Comp. St. 1911, p. 133, 1912 Supp. F. S. A. v. 1, p. 137.* "Whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge shall proceed no further therein, but another judge shall be designated in the manner prescribed in the section last preceding, or chosen in the manner prescribed in section twenty-three (quoted § 23, infra), to hear such matter. Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term of the court, or good cause shall be shown for the failure to file it within such time. No party shall be entitled in any case to file more than one such affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith. The same proceedings shall be had when the presiding judge shall file with the clerk of the court a certificate that he deems himself unable for any reason to preside with absolute impartiality in the pending suit or action."

§ 32. Clerks, Marshals, District Attorneys—General Statement. *A clerk* for each district is appointed by the judge.[16]

Deputy clerks are appointed by the clerks, by and with the approval of the judge.[17]

Marshals for each district are appointed by the President.[18]

Deputy marshals are appointed by the marshal.[19]

Field marshals may also in some cases be appointed by the marshal.[20]

Bailiffs not to exceed five as the judge may determine are appointed by the marshal.[21]

A court crier is appointed by the court.[21]

U. S. 264, 15 L. ed. 902. As to judge showing partiality, see Glasgow v. Moyer, 225 U. S. 420, 56 L. ed. 1147, 32 Sup. Ct. Rep. 753. Construed in Ex parte N. K. Fairbanks Co. 194 Fed. 978.

16 § 33. 17 § 34. 18 § 35. 19 § 36.
20 § 37. 21 § 38.

k New legislation. In general, Glasgow v. Moyer, 225 U. S. 420, 56 L. ed.

A United States district attorney is appointed by the President for each district.[22]

Assistant district attorneys are appointed by the Attorney General.[23]

Counsel to assist the District Attorney may be appointed by the Attorney General.[22]

Disqualification for appointment.

§ *67, Judicial Code,*[l] *36 Stat. at L. 1105, Comp. St. 1911, p. 155, 1912 Supp. F. S. A. v. 1, p. 159.* "No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to the judge of such court."

Amendment Dec. 21, 1911, 37 Stat. at L. 46. "Provided, That no such person at present holding a position or employment in a circuit court shall be debarred from similar appointment or employment in the district court succeeding to such circuit court jurisdiction."

§ 33. Clerks.

§ *3, Judicial Code,*[m] *36 Stat. at L. 1087, Comp. St. 1911, p. 130, 1912 Supp. F. S. A. v. 1, p. 133.* "A clerk of the district court shall be appointed by the judge thereof, except as otherwise provided by law."

The *term* of the clerk is at the will of the district judge.[24]

The *oath* of the clerk is set out in § 794, R. S., Comp. Stat. 1901, p. 619, 4 F. S. A. 75, Rose's Code, § 570.

A *bond* is required under § 795, R. S., Comp. Stat. 1901, p. 619, 4 F. S. A. 82, and see § 3, act Feb. 22, 1875, ch. 95, 18 Stat. at L. 333, Comp. Stat. 1901, p. 619, 4 F. S. A. 83.

Additional bonds may be required, when the business of the court makes necessary, under the provisions of § 2, act Feb. 22,

1147, 32 Sup. Ct. Rep. 753. The mere filing of the affidavit does not disqualify the judge. Ex parte N. K. Fairbanks Co. 194 Fed. 978.

[22] § 39. [23] § 40.

[24] Ex parte Hennen (1839) 13 Pet. (U. S.) 230, 10 L. ed. 138.

[l] Re-enacting § 7 of act of Aug. 13, 1888, ch. 866, 25 Stat. at L. 437, Comp. St. 1901, p. 579, 4 F. S. A. 69, which section is repealed by § 297, Judicial Code. See Elgutter et al. v. Northwestern Mut. Life Ins. Co. 86 Fed. 500, 30 C. C. A. 218.

[m] A re-enactment of § 555, R. S., Rose's Code, § 567, Comp. St. 1901, p. 451, 4 F. S. A. 74, expressly repealed by § 297, Judicial Code.

1875, ch. 95, 18 Stat. at L. 333, Comp. St. 1901, p. 620, 4 F. S. A. 83.

If any clerk shall wilfully refuse or neglect to make any report, certificate, statement or other document required by law to be by him made, he may be removed by the President. § 5, act Feb. 22, 1875, ch. 95, 18 Stat. at L. 333, Comp. St. 1901, p. 621, 4 F. S. A. 153–4, Rose's Code, § 598.

For failure to do as set out in § 5 there is an additional punishment provided, § 6 same act making the neglect or refusal a misdemeanor.

§ 34. Deputy Clerks.

§ 4, Judicial Code,[n] *36 Stat. at L. 1087, Comp. St. 1911, p. 130, 1912 Supp. F. S. A. v. 1, p. 133.* "Except as otherwise specially provided by law, the clerk of the district court for each district may, with the approval of the district judge thereof, appoint such number of deputy clerks as may be deemed necessary by such judge, who may be designated to reside and maintain offices at such places of holding court as the judge may determine. Such deputies may be removed at the pleasure of the clerk appointing them, with the concurrence of the district judge. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk, in his name, until a clerk is appointed and qualified; and for the default or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk and his estate and the sureties on his official bond shall be liable; and his executor or administrator shall have such remedy for any such default or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime."

The bond of deputy clerks is required under § 796, R. S., Comp. Stat. 1901, p. 620, 4 F. S. A. 83.

The *oath* of the deputy clerk is the same as that of the clerk.[25]

§ 35. Marshals.

§ 776, R. S., Comp. Stat. 1901, p. 604, 4 F. S. A. 76, Rose's Code, § 618. "(Marshals—for all the districts.) A

[25] See § 33, supra.

[n] Superseding § 558, R. S., Rose's Code, § 568, 1 Comp. St. 1901, p. 452,

marshal shall be appointed in each district, except in the middle district of Alabama, and the northern district of Georgia, and the western district of South Carolina. The marshal of the southern district of Alabama shall perform the duties of marshal of the middle district of said state, and shall keep an office at Montgomery in said middle district. The marshal of the southern district of Georgia shall perform the duties of marshal of the northern district of said state. The marshal of the eastern district of South Carolina shall perform the duties of marshal of the western district of said state."

The term of the marshal is four years, under § 779, R. S., Comp. Stat. 1901, p. 605, 4 F. S. A. 76, Rose's Code, § 617.

Vacancies in marshal's office may be temporarily filled under § 793, R. S., Comp. Stat. 1901, p. 610, 4 F. S. A. 72.

The oath of the marshal is defined by § 782, R. S., Comp. Stat. 1901, p. 606, 4 F. S. A. 78, Rose's Code, § 625.

The bond of the marshal is required under § 783, R. S., Comp. Stat. 1901, p. 607, 4 F. S. A. 84, Rose's Code, § 627.

Suit on marshal's bond is authorized under § 784, R. S., Comp. Stat. 1901, p. 607, 4 F. S. A. 84, Rose's Code, § 629.

Bond to be further security after judgment is provided in § 785, R. S., Comp. Stat. 1901, p. 607, 4 F. S. A. 85, Rose's Code, § 630.

Limitation of suit on bond is defined in § 726, R. S., Comp. Stat. 1901, p. 584, 4 F. S. A. 85, Rose's Code, § 631.

§ 36. Deputy Marshals.

§ *780, R. S., Comp. Stat. 1901, p. 605, 4 F. S. A. 76,* "(Deputy marshals.) Every marshal may appoint one or more deputies, who shall be removable from office by the judge of the district court, or by the circuit court for the district, at the pleasure of either."

Oath of deputy marshal set out in § 782, R. S., Comp. Stat. 1901, p. 606, 4 F. S. A. 78, Rose's Code, § 625.

4 F. S. A. p. 74, Pierce, Code, § 6989, repealed by § 297, Judicial Code. Under the old section it was held that salary of deputy must be paid by the clerk from the earnings of the office under the fee bill. Erwin v. United States (1889), 37 Fed. 475, 2 L.R.A. 229. Deputy is a servant of the officer for whom the officer shall answer. 7 Bac. Abr. 316 (L). A deputy clerk is an officer of the court. Ex parte Simons, 32 Fed. 681.

The marshal may appoint bonded deputies without regard to the civil service laws. (38 Stat. at L. 208.)

§ 37. Marshal's Field Deputies.

§ 11, Act May 28, 1896, ch. 252, 29 Stat. at L. 182, Comp. St. 1901, p. 615, 4 F. S. A. 77, as amended by act March 4, 1911, ch. 269, 36 Stat. at L. 1555, Comp. St. 1911, p. 263, 1912 Supp. F. S. A. v. 1, p. 130. "That at any time when, in the opinion of the marshal of any district, the public interest will thereby be promoted, he may appoint one or more deputy marshals for such district, who shall be known as field deputies, and who, unless sooner removed by the district court as now provided by law, shall hold office during the pleasure of the marshal, except as hereinafter provided, and who shall each, as his compensation, receive the gross fees, including mileage, as provided by law, earned by him, not to exceed one thousand five hundred dollars per fiscal year, or at that rate for any part of a fiscal year; and in addition shall be allowed his actual necessary expenses, not exceeding two dollars a day, while endeavoring to arrest, under process, a person charged with or convicted of crime: *Provided,* That a field deputy may elect to receive actual expenses on any trip in lieu of mileage: *Provided further,* That in special cases, where in his judgment justice requires, the Attorney General may make an additional allowance, not, however, in any case to make the aggregate annual compensation of any field deputy in excess of two thousand five hundred dollars nor more than the gross fees earned by such field deputy. The marshal, immediately after making any appointment or appointments under this section, shall report the same to the Attorney General, stating the facts as distinguished from conclusions constituting the reason for such appointment, and the Attorney General may at any time cancel any such appointment as the public interest may require. This act to take effect from and after July first, nineteen hundred and eleven."

§ 38. Criers and Bailiffs.

§ 5, Judicial Code,[o] *36 Stat. at L. 1088, Comp. St. 1911, p. 130, 1912 Supp. F. S. A. v. 1, p. 133.* "The district court for each district may appoint a crier for the court; and the

[o] § 715, R. S., Rose's Code, § 687, 1 Comp. Stat. 1901, p. 579, 4 F. S. A. 81. Bailiffs entitled to *per diem* for attendance on days when court is adjourned by written order of the judge as provided by R. S. § 672. United States v. McCabe, 122 Fed. 653; United States v. Pitman, 147 U. S. 669, 37

marshal may appoint such number of persons, not exceeding five, as the judge may determine, to wait upon the grand and other juries, and for other necessary purposes."

§ 39. United States District Attorney.

§ *767, R. S., Comp. St. 1901, p. 599, 4 F. S. A. 70,* "(District attorneys—for all the districts.) There shall be appointed in each district, except in the middle district of Alabama, and the northern district of Georgia, and the western district of South Carolina, a person learned in the law, to act as attorney for the United States in such district. The district attorney of the northern district of Alabama shall perform the duties of district attorney of the middle district of said state; and the district attorney of the southern district of Georgia shall perform the duties of district attorney of the northern district of said state; and the district attorney of the eastern district of South Carolina shall perform the duties of district attorney for the western district of said state."

Their *term* is four years and they are required to be sworn under § 769, R. S., Comp. Stat. 1901, p. 600, 4 F. S. A. 71.

Special Counsel may be retained to aid United States district attorneys under § 363, R. S., Comp. Stat. 1901, p. 208, 4 F. S. A. 70, Rose's Code, § 552, but heads of departments must call on department of justice for counsel under § 189, R. S., Comp. St. 1901, p. 94, 3 F. S. A. 63.

Compensation and oath of such special counsel are provided for in § 366, R. S., Comp. Stat. 1901, p. 209, 4 F. S. A. 71, Rose's Code, § 555.

Vacancies in office may be temporarily filled under § 793, R. S., Comp. Stat. 1901, p. 610, 4 F. S. A. 72.

§ 40. Assistant District Attorney.

§ *8, Act May 28, 1896, ch. 252, 29 Stat. at L. 186, Comp. St. 1901, p. 613, 4 F. S. A. 71.* "(Assistant district attorneys—compensation—expense allowance of district attorney and assistants.) That whenever, in the opinion of the district judge of any district or the chief justice

L. ed. 324, 13 Sup. Ct. Rep. 425. Duties of messenger and crier are compatible and distinct in character, and compensation may be received for both by the one performing them. Preston v. United States, 37 Fed. 417; United States v. Saunders, 120 U. S. 126, 30 L. ed. 594, 7 Sup. Ct. Rep. 467.

of any territory and the district attorney, evidenced by writing, the public interest requires it, one or more assistant district attorneys may be appointed, by the Attorney General; but such opinion shall state to the Attorney General the facts as distinguished from conclusions, showing the necessity therefor. Such assistant district attorneys shall be paid such salary as the Attorney General may from time to time determine as to each, which shall in no case exceed two thousand five hundred dollars per annum: *Provided,* That the necessary expenses for lodging and subsistence actually paid, not exceeding four dollars per day and actual and necessary traveling expenses of the district attorney and his assistants, while absent from their respective official residences and necessarily employed in going to, returning from, and attending before any United States court, commissioner, or other committing magistrate, and while otherwise necessarily absent from their respective official residences on official business, shall be allowed and paid in the manner hereinbefore provided."

§ 41. Court Commissioners, Receivers, Masters in Chancery—General Statement. *Court commissioners* are officers with magisterial powers in both civil and criminal matters coming under the jurisdiction of the Federal laws.[26]

Receivers are officers appointed in special cases with authority to operate and manage properties. This power must be exercised in conformity with valid state laws of the state where the property is situated.[27] They may be sued without leave of court in certain cases.[28]

Masters in chancery are appointed under Equity Rule 68.[29]

§ *68, Judicial Code,*[p] *36 Stat. at L. 1105, Comp. St. 1911, p. 155, 1912 Supp. F. S. A. v. 1, p. 159.* "No clerk of a district court of the United States or his deputy shall be appointed a receiver or master in any case, except where the judge of said court shall determine that special reasons exist therefor, to be assigned in the order of appointment."

[26] § 42. [27] § 1052, infra. See also ch. 37, post. [28] § 1053, infra. [29] Ch. 36, post.

[p] Re-enacting act of March 3, 1879, ch. 183, 20 Stat. at L. 415, Foster's Fed. Prac. (4th ed.) pp. 842, 985. Comp. St. 1901, p. 591. 4 F. S. A. 81, which is repealed by § 297, Judicial Code. In general, Briggs v. Neal et al. 120 Fed. 224, 56 C. C. A. 572.

§ 42. Court Commissioners.

§ 19, *Act May 28, 1896, ch. 252, 29 Stat. at L. 184, Comp. St. 1901, p. 499, 4 F. S. A. 79.* "(Circuit court commissioners abolished—United States commissioners appointed—powers and duties.) That the terms of office of all commissioners of the circuit courts heretofore appointed shall expire on the thirtieth day of June, eighteen hundred and ninety-seven; and such office shall on that day cease to exist, and said commissioners shall then deposit all the records and other official papers appertaining to their offices in the office of the clerk of the circuit court by which they were appointed. All proceedings pending, returnable, unexecuted, or unfinished at said date before any such commissioner shall be continued and disposed of according to law by such commissioner appointed as herein provided, as may be designated by the district court for that purpose. It shall be the duty of the district court of each judicial district to appoint such number of persons, to be known as United States commissioners, at such places in the district as may be designated by the district court, which United States commissioners shall have the powers and perform the same duties as are now imposed upon commissioners of the circuit courts. The appointment of such United States commissioners shall be entered of record in the district courts, and notice thereof at once given by the clerk to the Attorney General. That such United States commissioners shall hold their offices, respectively, for the term of four years, but they shall be at any time subject to removal by the district court; and no person shall at any time be a clerk or deputy clerk of a United States court and a United States commissioner without the approval of the Attorney General: *Provided,* That all acts and parts of acts applicable to commissioners of the circuit courts, except as to appointment and fees, shall be applicable to United States commissioners appointed under this act. Warrants of arrest for violations of internal revenue laws may be issued by United States commissioners upon the sworn complaint of a United States district attorney, assistant United States district attorney, collector or deputy collector of internal revenue, or revenue agent or private citizen, but no such warrant of arrest shall be issued upon the sworn complaint of a private citizen unless first approved in writing by a United States district attorney. That United States commissioners and all clerks and all deputy clerks of United States courts are hereby authorized to administer oaths."

§ *61, Judicial Code,*[pp] *36 Stat. at L. 1104, Comp. St. 1911, p. 154, 1912 Supp. F. S. A. v. 1, p. 158.* "Any district judge may appoint commissioners, before whom appraisers of vessels or goods and merchandise seized for breaches of any law of the United States may be sworn; and such oaths, so taken, shall be as effectual as if taken before the judge in open court."

Arrests may be made by commissioners for offenses against the United States.[30]

Bail may be fixed by a commissioner in criminal cases except where punishment is death.[31] He may receive a surrender under bail.[32]

Civil rights laws—special powers are conferred.[33]

Other powers and duties are mentioned in the note, 4 F. S. A. 164 to § 945, R. S.

[30] § 1014, R. S., Comp. Stat. 1901, p. 716, 2 F. S. A. 32.
[31] § 1015, R. S., Comp. Stat. 1901, p. 718, 1 F. S. A. 521, Rose's Code, § 1544. § 1016, R. S., Comp. Stat. 1901, p. 718, 1 F. S. A. 522, Rose's Code, § 1595.
[32] § 1018, R. S., Comp. Stat. 1901, p. 719, 1 F. S. A. 522, Rose's Code, § 1549.
[33] §§ 1982–1987, R. S., Comp. Stat. 1901, pp. 1264, 1265, 1 F. S. A. 798–800.
[pp] Re-enacting § 570, R. S., Rose's Code, § 679, Comp. St. 1901, p. 463, 4 F. S. A. 79, which section is repealed by § 297, Judicial Code.

CHAPTER 3.

DISTRICT COURTS—ORGANIZATION, FURTHER AS TO.

Sec.

60. General Statement.
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§ 60. General Statement. Judicial officers for district courts have been treated in chapter 2, ante.

The regular terms, sessions, and places of holding forth in the various districts are set out in chapter 4, post.

The court is always open for certain purposes.[1]

Special terms may be ordered by the district judge when business requires.[2]

If the judge is absent, the marshal or clerk may adjourn court.[3]

So also, if the office of judge becomes vacant, the clerk may continue pending proceedings.[4]

Trials commenced may be completed in a new term. They are not stayed or discontinued by the arrival of a new term.[5]

Monthly adjournments of terms may be made to expedite criminal cases.[6]

[1] § 61 [2] § 62 [3] § 63 [4] § 64
[5] § 65 [6] § 66

The altering of terms does not affect the validity of proceedings already taken, and matters pending are thrown over to the next term following.[7]

Records of district court are kept where the court is held, and, if more than one of such places, where the district judge designates.[8]

On becoming a state, territorial records are transferred to the district court.[9]

Reports of decisions are to be found in Federal Reporter and, before 1880, in the Federal Decisions.[10]

Rules for admission to practice are provided in the several districts.[11]

Rules of court in law actions may be established under §§ 914 and 918, Revised Statutes.[12]

Rules of court in equity suits are established by the Supreme Court under § 917, Revised Statutes.[13]

§ 61. Courts Always Open for Certain Purposes.

§ 9, Judicial Code,[a] *36 Stat. at L. 1088, Comp. St. 1911, p. 131, 1912 Supp. F. S. A. v. 1, p. 134.* "The district courts, as courts of admiralty and as courts of equity, shall be deemed always open for the purpose of filing any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings preparatory to the hearing, upon their merits, of all causes pending therein. Any district judge may, upon reasonable notice to the parties, make, direct, and award, at chambers or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable of course, according to the rules and practice of the court."

7 § 67 8 § 68 9 § 69 10 § 70
11 § 71 12 § 72 13 § 73

a Re-enacting § 574, R. S., Comp. St. 1901, p. 475, Rose's Code, § 368, 4 F. S. A. 671, which is repealed by § 297, Judicial Code. Same as Equity Rule 1, omitting the words "as courts of admiralty and." McDowell v. United States, 159 U. S. 596, 600, 40 L. ed. 271, 273, 16 Sup. Ct. Rep. 111; Central Trust Co. v. Sheffield & Birmingham Coal, I. R. Co. 60 Fed. 9; Butler v. United States, 87 Fed. 655. In general, United States v. Finnell, 185 U. S. 236, 46 L. ed. 890, 22 Sup. Ct. Rep. 633; United States v. Marvin, 212 U. S. 275, 53 L. ed. 510, 29 Sup. Ct. Rep. 297.

§ 62. Special Terms.

§ 11, *Judicial Code*,[b] *36 Stat. at L. 1088, Comp. St. 1911, p. 131, 1912 Supp. F. S. A. v. 1, p. 134.* "A special term of any district court may be held at the same place where any regular term is held, or at such other place in the district as the nature of the business may require, and at such time and upon such notice as may be ordered by the district judge. Any business may be transacted at such special term which might be transacted at a regular term."

§ 63. Adjournment of Court When Judge Absent.

§ 12, *Judicial Code*,[c] *36 Stat. at L. 1088, Comp. St. 1911, p. 131, 1912 Supp. F. S. A. v. 1, p. 135.* "If the judge of any district court is unable to attend at the commencement of any regular, adjourned, or special term, or any time during such term, the court may be adjourned by the marshal, or clerk, by virtue of a written order directed to him by the judge, to the next regular term, or to any earlier day, as the order may direct."

§ 64. Continuance Where Office of Judge Becomes Vacant.

§ 22, *Judicial Code*,[d] *36 Stat. at L. 1090, Comp. St. 1911, p. 134, 1912 Supp. F. S. A. v. 1, p. 138.* "When the office of judge of any district court becomes vacant, all process,

[b] Re-enacting § 581, R. S., Rose's Code, § 359, Foster's Fed. Prac. (4th ed.) p. 226, 1 Comp. St. 1901, p. 477, 4 F. S. A. 672, which is repealed by § 297, Judicial Code.

Butler v. United States, 87 Fed. 655; United States v. Kessel, 63 Fed. 433. Orders made in chambers. United States v. The Schooner Little Charles, 1 Brock. (U. S.) 380, 26 Fed. Cas. No. 15,613. In general, American Railroad Co. of Porto Rico v. Castro, 204 U. S. 453, 51 L. ed. 564, 27 Sup. Ct. Rep. 466; Goll v. United States, 151 Fed. 412, 80 C. C. A. 642.

[c] Re-enacting § 583, R. S., Rose's Code, § 364, Comp. St. 1901, p. 478, 4 F. S. A. 673, and §§ 671, 672, R. S., 4 F. S. A. 688, which sections are repealed by § 297, Judicial Code.

This refers to any day on which the court is appointed to sit. Pitman v. United States, 45 Fed. 159.

The term is that session of the court which begins at a time fixed by or under authority of law, and, having proceeded continuously, ends when the business then under consideration is concluded. Pitman v. United States, supra. In general, United States v. Pitman, 147 U. S. 669, 37 L. ed. 324, 13 Sup. Ct. Rep. 425.

[d] Re-enacting § 602, R. S., Rose's Code, § 181, Foster's Fed. Prac. (4th ed.) p. 682, Comp. St. 1901, p. 484, 4 F. S. A. 679, which section is repealed by § 297, Judicial Code. In general, Ball v. United States, 140 U. S. 118, 35 L. ed. 377, 11 Sup. Ct. Rep. 761.

pleadings, and proceedings pending before such court shall, if necessary, be continued by the clerk thereof until such times as a judge shall be appointed, or designated to hold such court; and the judge so designated, while holding such court, shall possess the powers conferred by, and be subject to the provisions contained in, section nineteen."

§ 65. Trials Commenced May Be Concluded in New Term.

§ 8, *Judicial Code,*[e] *36 Stat. at L. 1088, Comp. St. 1911, p. 130, 1912 Supp. F. S. A. v. 1, p. 134.* "When the trial or hearing of any cause, civil or criminal, in a district court has been commenced and is in progress before a jury or the court, it shall not be stayed or discontinued by the arrival of the time fixed by law for another session of said court; but the court may proceed therein and bring it to a conclusion in the same manner and with the same effect as if another stated term of the court had not intervened."

§ 66. Monthly Adjournments of Regular Term to Expedite Criminal Cases.

§ 10, *Judicial Code,*[f] *36 Stat. at L. 1088, Comp. St. 1911, p. 131, 1912 Supp. F. S. A. v. 1, p. 134.* "District courts shall hold monthly adjournments of their regular terms, for the trial of criminal causes, when their business requires it to be done, in order to prevent undue expenses and delays in such cases."

§ 67. Effect of Altering Terms.

§ 7, *Judicial Code,*[g] *36 Stat. at L. 1088, Comp. St. 1911, p. 130, 1912 Supp. F. S. A. v. 1, p. 134.* "No action, suit, proceeding, or process in any district court shall abate or be rendered invalid by reason of any act changing the time of

[e] Re-enacting § 746, R. S., Rose's Code, § 370, Foster's Fed. Prac. (4th ed.) p. 227, Comp. St. 1901, p. 590, 4 F. S. A. 556, which is repealed by § 297, Judicial Code. It has been held that a trial is commenced when the term ends, although a full jury has not been impaneled. United States v. Loughery, 13 Blatchf. 267, 26 Fed. Cas. No. 15,631.

[f] Re-enacting without change R. S., § 578, Rose's Code, § 360, Comp. St. 1901, p. 476, 4 F. S. A. 672, which is repealed by § 297, Judicial Code. In general, Pitman v. United States, 45 Fed. 159. Adjournment may be after prior adjournment by the judge. Clerk entitled to fees for attendance on day of adjournment.

[g] Re-enacting § 573, R. S., Rose's Code, § 369, 1 Comp. St. 1901, p. 475, 4 F. S. A. 671. Similar provision as to circuit courts repealed, § 660,

holding such court, but the same shall be deemed to be returnable to, pending, and triable in the terms established next after the return day thereof."

§ 68. Places for Keeping Records.

§ *6, Judicial Code,*[h] *36 Stat. at L. 1088, Comp. St. 1911, p. 130, 1912 Supp. F. S. A. v. 1, p. 134.* "The records of a district court shall be kept at the place where the court is held. When it is held at more than one place in any district and the place of keeping the records is not specially provided by law, they shall be kept at either of the places of holding the court which may be designated by the district judge."

§ 69. Transfer and Deposit of Territorial Records on Becoming a State. District Judge's Duty.

§ *62, Judicial Code,*[i] *36 Stat. at L. 1104, Comp. St. 1911, p. 154, 1912 Supp. F. S. A. v. 1, p. 158.* "When any territory is admitted as a state, and a district court is established therein, all the records of the proceedings in the several cases pending in the highest court of said territory at the time of such admission, and all records of the proceedings in the several cases in which judgments or decrees had been rendered in said territorial court before that time, and from which writs of error could have been sued out or appeals could have been taken, or from which writs of error had been sued out or appeals had been taken and prosecuted to the Supreme Court or to the circuit court of appeals, shall be transferred to and deposited in the district court for the said state."

§ *63, Judicial Code,*[j] *36 Stat. at L. 1104, Comp. St. 1911, p. 154, 1912 Supp. F. S. A. v. 1, p. 158.* "It shall be the duty of the district judge, in the case provided in the preceding section, to demand of the clerk, or other person having possession or custody of the records therein mentioned, the

R. S., 1 Comp. St. 1901, p. 542, 4 F. S. A. 685. McGlashan v. United States, 71 Fed. 434, 18 C. C. A. 172.

[h] Re-enactment of § 562, R. S., Rose's Code, § 382, act Sept. 24, 1789, ch. 20, § 3, 1 Stat. at L. 73, 1 Comp. Stat. 1901, p. 454, 4 F. S. A. p. 218, repealed by § 297, Judicial Code.

[i] Re-enacting § 567, R. S., Rose's Code, § 383, Foster's Fed. Prac. (4th ed.) p. 1456, Comp. St. 1901, p. 462, 4 F. S. A. 237, which section is repealed by § 297, Judicial Code. In general, Benner et al. v. Porter, 50 U. S. 235, 13 L. ed. 119, 9 How. (U. S.) 235.

[j] Re-enacting § 568, R. S., Rose's Code, § 383, Foster's Fed. Prac. (4th

delivery thereof, to be deposited in said district court; and in case of the refusal of such clerk or person to comply with such demand, the said district judge shall compel the delivery of such records by attachment or otherwise, according to law."

§ 70. Reports of Decisions. The decisions of the district courts are to be found in the Federal Reporter, containing in 1913 some 200 volumes. This set also contains the United States circuit court decisions up to the time said court was abolished, January 1, 1912. It also contains the decisions of the circuit court of appeals, established in 1891, and the commerce court, established in 1911, and since abolished. (See ch. 9, Judicial Code, in our Appendix.) Decisions prior to 1880 are contained in the Federal Cases.

§ 71. Admission to Practice Before. The rules for admission to practice before the district courts of the United States are contained in the court rules adopted by the several district courts, and vary in the different districts. Generally, attorneys who have been admitted to practice in the state courts are eligible and admitted on motion.

§ 72. Rules of Court—Law Actions.[14] The rules governing law actions under §§ 914 and 918 of the Revised Statutes of the United States, quoted below, conform to those of state courts of record as modified by Federal statutes and rules of practice of the district courts in the several districts.

§ 914, R. S., Comp. St. 1901, p. 684, 4 F. S. A. 563. (Practice and proceedings in other than equity and admiralty causes.) "The practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the circuit and district courts, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the state within which such circuit

ed.) p. 1456, Comp. St. 1901, p. 462, 4 F. S. A. 238, which section is repealed by § 297, Judicial Code.

[14] See ch. 18.

or district courts are held, any rule of court to the contrary notwithstanding."

§ 918, R. S., Comp. St. 1901, p. 685, 4 F. S. A. 585, Rose's Code, § 805. (Practice in the several courts to be regulated by their own rules.) "The several circuit and district courts may, from time to time, and in any manner not inconsistent with any law of the United States, or with any rule prescribed by the Supreme Court under the preceding section, make rules and orders directing the returning of writs and processes, the filing of pleadings, the taking of rules, the entering and making up of judgments by default, and other matters in vacation, and otherwise regulate their own practice as may be necessary or convenient for the advancement of justice and the prevention of delays in proceedings."

§ 73. Rules of Court—Equity Suits.[15] Equity suits are governed by the United States Statutes, Supreme Court rules, and additional district court rules. Under § 917, R. S., the Supreme Court is given power to prescribe rules in equity and admiralty suits, and under §§ 918 and 913, R. S., and Equity Rule 79, the district courts may prescribe additional rules for their own practice.

§ 918, R. S., is quoted in § 72, supra. The other sections and rule mentioned above are as follows:

§ 917, R. S., Comp. Stat. 1901, p. 684, 4 F. S. A. 583, Rose's Code, §§ 802, 1196. (Power of the Supreme Court to regulate the practice of circuit and district courts.) "The Supreme Court shall have power to prescribe, from time to time, and in any manner not inconsistent with any law of the United States, the forms of writs and other process, the modes of framing and filing proceedings and pleadings, of taking and obtaining evidence, of obtaining discovery, of proceeding to obtain relief, of drawing up, entering, and enrolling decrees, and of proceeding before trustees appointed by the court, and generally to regulate the whole practice, to be used, in suits in equity or admiralty, by the circuit and district courts."

§ 913, R. S., Comp. St. 1901, p. 683, 4 F. S. A.

[15] See ch. 29.

561, Rose's Code, §§ 936, 1195. (Mesne process, and proceedings in equity and admiralty.) "The forms of mesne process and the forms and modes of proceeding in suits of equity and of admiralty and maritime jurisdiction in the circuit and district courts shall be according to the principles, rules, and usages which belong to courts of equity and of admiralty, respectively, except when it is otherwise provided by statute or by rules of court made in pursuance thereof; but the same shall be subject to alteration and addition by the said courts, respectively, and to regulation by the Supreme Court, by rules prescribed, from time to time, to any circuit or district court, not inconsistent with the laws of the United States."

Equity Rule 79.[k] (Additional rules by district court.) "With the concurrence of a majority of the circuit judges for the circuit, the district courts may make any other and further rules and regulations for the practice, proceedings, and process, mesne and final, in their respective districts, not inconsistent with the rules hereby prescribed, and from time to time alter and amend the same."

[k] See Equity Rule 79, with Annotations, in Appendix.

CHAPTER 4.

JUDICIAL DISTRICTS—TERMS AND PLACES OF HOLDING COURT IN THE SEVERAL STATES.

Sec.
100. The United States.
101. Alabama.
102. Arkansas.
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118. Maryland.
119. Massachusetts.
120. Michigan.
121. Minnesota.
122. Mississippi.
123. Missouri.
124. Montana.
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127. New Hampshire.
128. New Jersey.
129. New Mexico.
130. New York.
131. North Carolina.
132. North Dakota.
133. Ohio.
134. Oklahoma.
135. Oregon.
136. Pennsylvania.
137. Rhode Island.
138. South Carolina.
139. South Dakota.
140. Tennessee.
141. Texas.
142. Utah.
143. Vermont.
144. Virginia.
145. Washington.
146. West Virginia.
147. Wisconsin.
148. Wyoming.

§ 100. The United States. Chapter 5 of the Judicial Code, contained in our Appendix, deals with the subject-matter in this chapter contained. The chapter heading of the Code reads, "District Courts—Districts, and Provisions Applicable to Particular States."

No district contains territory of more than one state, although

a state may contain more than one district, and always contains at least one.[1]

Judicial officers for these district courts are treated of in chapter 2. Their organization in other respects, special terms, adjournments, places of keeping records, reports of decisions, rules for admission to practice before, and their rules of practice, are treated in chapter 3.

This chapter gives the territorial boundaries of the various divisions and districts in the several states, the times and places for holding court.

§ 101. Alabama.

§ *70, Judicial Code,*[a] *Comp. St. 1911, p. 156, 1912 Supp. F. S. A. v. 1, p. 161, as amended act Feb. 28, 1913, ch. 89, 37 Stat. at L. 698, 699.* "The state of Alabama is divided into three judicial districts, to be known as the northern, middle, and southern districts of Alabama. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Cullman, Jackson, Lawrence, Limestone, Madison, and Morgan, which shall constitute the northeastern division of said district; also the territory embraced on the date last mentioned in the counties of Colbert, Franklin, and Lauderdale, which shall constitute the northwestern division of said district; also the territory embraced on the date last mentioned in the counties of Cherokee, Dekalb, Etowah, Marshall, and Saint Clair, which shall constitute the middle division of said district; also the territory embraced on the date last mentioned in the counties of Blount, Jefferson, and Shelby, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Walker, Winston, Marion, Fayette, and Lamar, which shall constitute the Jasper division of said district; also the territory embraced on the date last mentioned in the counties of Calhoun, Clay, Cleburne, and Talladega, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Bibb, Greene, Pickens, Sumter, and Tuscaloosa, which

1 § 20, infra.

a Drawn from § 532, R. S., Comp. St. 1901, p. 317, 4 F. S. A. 17, and other acts, 10 F. S. A. 177, and 1909 Supp. F. S. A. 298, which are repealed by § 297, Judicial Code.

shall constitute the western division of said district. Terms of the district court for the northeastern division shall be held at Huntsville on the first Tuesday in April and the second Tuesday in October; for the northwestern division, at Florence on the second Tuesday in February and the third Tuesday in October: *Provided,* That suitable rooms and accommodations for holding court at Florence shall be furnished free of expense to the government; for the middle division, at Gadsden on the first Tuesdays in February and August: *Provided,* That suitable rooms and accommodations for the holding court at Gadsden shall be furnished free of expense to the government; for the southern division, at Birmingham on the first Mondays in March and September, which courts shall remain in session for the transaction of business at least six months in each calendar year; for the Jasper division, at Jasper on the second Tuesdays in January and June; *Provided,* That suitable rooms and accommodations for holding court at Jasper shall be furnished free of expense to the government; for the eastern division, at Anniston on the first Mondays in May and November; and for the western division, at Tuscaloosa, on the first Tuesdays in January and June. The clerk of the court for the northern district shall maintain an office in charge of himself or a deputy at Anniston, at Florence, at Jasper, and at Gadsden, which shall be kept open at all times for the transaction of the business of said court. The district judge for the northern district shall reside at Birmingham. The middle district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Autauga, Barbour, Bullock, Butler, Chilton, Coosa, Covington, Crenshaw, Elmore, Lowndes, Montgomery, and Pike, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Coffee, Dale, Geneva, Henry, and Houston, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Chambers, Lee, Macon, Randolph, Russell, and Tallapoosa, which shall constitute the eastern division of said middle judicial district. Terms of the district court for the northern division shall be held at Montgomery on the first Tuesdays in May and December; and for the southern division, at Dothan on the first Mondays in June and December and for the eastern division, at Opelika on the first Mondays in April and November: *Provided,* That suitable rooms and

accommodations for holding court at Opelika shall be furnished free of expense to the government. The clerk of the court for the middle district shall maintain an office, in charge of himself or a deputy, at Dothan, and shall maintain an office in charge of himself or a deputy at Opelika, which said offices at Dothan and Opelika shall be kept open at all times for the transaction of the business of said divisions. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Baldwin, Choctaw, Clarke, Conecuh, Escambia, Mobile, Monroe, and Washington, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Dallas, Hale, Marengo, Perry, and Wilcox, which shall constitute the northern division of said district. Terms of the district court for the southern division shall be held at Mobile on the fourth Mondays in May and November; and for the northern division at Selma on the first Mondays in May and November."

Act Jan. 17, 1912, ch. 10, 37 Stat. at L. 53. "That all civil causes and proceedings now pending in the circuit or the district court of the United States for the middle district of Alabama, which arose in either of the counties now embraced in the southern division of the middle district of Alabama, as established in the act approved March seventh, nineteen hundred and eight, entitled, 'An Act to Provide for Circuit and District Courts of the United States at Dothan, Alabama,' shall, upon the application of either party, be transferred to the said southern division of the middle district of Alabama for trial and disposition."

§ 102. Arkansas.

§ *71, Judicial Code,*[b] *Comp. St. 1911, p. 158, 1912 Supp. F. S. A. v. 1, p. 162.* "The state of Arkansas is divided into two districts, to be known as the eastern and western districts of Arkansas. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Sevier, Howard, Little River, Pike, Hempstead, Miller, Lafayette, Columbia, Nevada, Ouachita,

[b] Drawn from § 533, R. S. U. S. Foster's Fed. Prac. (4th ed.) p. 233, Comp. St. 1901, p. 319, 4 F. S. A. 18, § 556, R. S. U. S. Comp. St. 1901, p. 451, 4 F. S. A. 166, and other acts, 10 F. S. A. 211, which statutes are repealed by § 297, Judicial Code, and also 1909 Supp. F. S. A. 301.

Union, and Calhoun, which shall constitute the Texarkana division of said district; also the territory embraced on the date last mentioned in the counties of Polk, Scott, Yell, Logan, Sebastian, Franklin, Crawford, Washington, Benton, and Johnson, which shall constitute the Fort Smith division of said district; also the territory embraced on the date last mentioned in the counties of Baxter, Boone, Carroll, Madison, Marion, Newton, and Searcy, which shall constitute the Harrison division of said district. Terms of the district court for the Texarkana division shall be held at Texarkana on the second Mondays in May and November; for the Fort Smith division, at Fort Smith on the second Mondays in January and June; and for the Harrison division, at Harrison on the second Mondays in April and October. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Lee, Phillips, Saint Francis, Cross, Monroe, and Woodruff, which constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Independence, Cleburne, Stone, Izard, Sharp, and Jackson, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Crittenden, Clay, Craighead, Greene, Mississippi, Poinsett, Fulton, Randolph, and Lawrence, which shall constitute the Jonesboro division of said district; and also the territory embraced on the date last mentioned in the counties of Arkansas, Ashley, Bradley, Chicot, Clark, Cleveland, Conway, Dallas, Desha, Drew, Faulkner, Garland, Grant, Hot Spring, Jefferson, Lincoln, Lonoke, Montgomery, Perry, Pope, Prairie, Pulaski, Saline, Van Buren, and White, which shall constitute the western division of said district. Terms of the district court for the eastern division shall be held at Helena on the second Monday in March and the first Monday in October; for the northern division, at Batesville on the fourth Monday in May and the second Monday in December; for the Jonesboro division, at Jonesboro on the second Mondays in May and November; and for the western division, at Little Rock on the first Monday in April and the third Monday in October. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Little Rock, at Helena, at Jonesboro, and at Batesville, which shall be kept open at all times for the transaction of the business of the court. And the clerk of the court for the western district shall maintain an office in

charge of himself or a deputy at Fort Smith, at Harrison, and at Texarkana, which shall be kept open at all times for the transaction of the business of the court."

§ 103. Arizona.

Act Oct. 3, 1913, ch. 17, 38 Stat. at L. 203. "That the state of Arizona shall constitute one judicial district, to be known as the district of Arizona.

Sec. 2. "That terms of the district court shall be held in Tucson on the first Mondays in May and November; at Phœnix on the first Mondays in April and October; at Prescott on the first Mondays in March and September; and at Globe on the first Mondays in June and December. Causes, civil and criminal, may be transferred by the court or judge thereof from any of the aforesaid places, where court shall be held in said district, to any of the places herein above mentioned in said district, when the convenience of the parties or the ends of justice would be promoted by the transfer; and any interlocutory order made by the court or judge thereof in any of the above-mentioned places."

§ 104. California.

§ *72, Judicial Code,*[c] *36 Stat. at L. 1107, Comp. St. 1911, p. 159, 1912 Supp. F. S. A. v. 1, p. 163.* "The state of California is divided into two districts, to be known as the northern and southern districts of California. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, and Tulare, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Fresno on the first Monday in May and the second Monday in November; and for the southern division at Los Angeles, on the second Monday in January and the second Monday in July, and at San Diego on the second Mondays

[c] Drawn from § 531, R. S., Foster's Fed. Prac. (4th ed.) pp. 234, 238, 240, 241, 242, 243, 246, 249, 254, 256, 264, 266, Comp. St. 1901, p. 316, 4 F. S. A. 16, § 572, R. S., Comp. St. 1901, p. 464, 4 F. S. A. 665, § 586, R. S., 4 F. S. A. 674, which sections are repealed by § 97, Judicial Code, and Comp. St. 324, 4 F. S. A. 20, 4 F. S. A. 695, and 1909 Supp. F. S. A. p. 302.

in March and September. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba. Terms of the district court for the northern district shall be held at San Francisco on the first Monday in March, the second Monday in July, and the first Monday in November; at Sacramento on the second Monday in April; and at Eureka on the third Monday in July."

§ 105. Colorado.

§ *73, Judicial Code,*[d] *36 Stat. at L. 1108, Comp. St. 1911, p. 160, 1912 Supp. F. S. A. v. 1, p. 164.* "The state of Colorado shall constitute one judicial district, to be known as the district of Colorado. Terms of the district court shall be held at Denver on the first Tuesdays in May and November; at Pueblo on the first Tuesday in April; and at Montrose on the second Tuesday in September."

§ 106. Connecticut.

§ *74, Judicial Code,*[e] *36 Stat. at L. 1108, Comp. St. 1911, p. 160, 1912 Supp. F. S. A. v. 1, p. 164.* "The state of Connecticut shall constitute one judicial district, to be known as the district of Connecticut. Terms of the district court shall be held at New Haven on the fourth Tuesdays in February and September, and at Hartford on the fourth Tuesday in May and the first Tuesday in December."

§ 107. Delaware.

§ *75, Judicial Code,*[f] *36 Stat. at L. 1108, Comp. St. 1911, p. 160, 1912 Supp. F. S. A. v. 1, p. 164.* "The state of Del-

[d] Re-enacting 19 Stat. at L. 61, Foster's Fed. Prac. (4th ed.) pp. 223, 234, Comp. St. 1901, p. 328, 4 F. S. A. 22.

[e] Re-enacting § 531, R. S. (see Ref. § 104, supra) Comp. St. 1901, p. 316, 4 F. S. A. 16, as to Connecticut.

[f] Re-enacting § 531, R. S. (see Ref. § 104, supra) Comp. St. 1901, p. 316, 4 F. S. A. 16, as to Delaware

aware shall constitute one judicial district, to be known as the district of Delaware. Terms of the district court shall be held at Wilmington on the second Tuesdays in March, June, September, and December."

§ 108. Florida.

§ *76, Judicial Code,*[g] *36 Stat. at L. 1108, Comp. St. 1911, p. 160, 1912 Supp. F. S. A. v. 1, p. 164.* "The state of Florida is divided into two districts, to be known as the northern and southern districts of Florida. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Baker, Bradford, Brevard, Citrus, Clay, Columbia, Dade, De Soto, Duva, Hamilton, Hernando, Hillsboro, Lake, Lee, Madison, Manatee, Marion, Monroe, Nassau, Orange, Osceola, Palm Beach, Pasco, Polk, Putnam, Saint John, Sumter, Suwanee, Saint Lucie, and Volusia. Terms of the district court for the southern district shall be held at Ocala on the third Monday in January; at Tampa on the second Monday in February; at Key West on the first Mondays in May and November; at Jacksonville on the first Monday in December; at Fernandina on the first Monday in April; and at Miami on the fourth Monday in April. The district court for the southern district shall be open at all times for the purpose of hearing and deciding causes of admiralty and maritime jurisdiction. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alachua, Calhoun, Escambia, Franklin, Gadsden, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Santa Rosa, Taylor, Wakulla, Walton, and Washington. Terms of the district court for the northern district shall be held at Tallahassee on the second Monday in January; at Pensacola on the first Mondays in May and November; at Marianna on the first Monday in April; and at Gainesville on the second Mondays in June and December."

§ 109. Georgia.

§ *77, Judicial Code,*[h] *36 Stat. at L. 1108, Comp. St.*

[g] Re-enacting § 534, R. S., Foster's Fed. Prac. (4th ed.) p. 234, Comp. St. 1901, p. 331, 4 F. S. A. 22, and amendments thereto. 20 Stat. at L. 280, 28 Stat. at L. 117.

[h] Re-enacting § 535, R. S., Foster's Fed. Prac. (4th ed.) p. 236, Comp.

1911, p. 161, 1912 Supp. F. S. A. v. 1, p. 165, as amended March 4, 1913, ch. 167, 37 Stat. at L. 1017. "The state of Georgia is divided into two districts, to be known as the northern and southern districts of Georgia. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Campbell, Carroll, Clayton, Cobb, Coweta, Cherokee, Dekalb, Douglas, Dawson, Fannin, Fayette, Fulton, Forsyth, Gilmer, Gwinnett, Hall, Henry, Lumpkin, Milton, Newton, Pickens, Rockdale, Spalding, Towns, and Union, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Banks, Clarke, Elbert, Franklin, Greene, Habersham, Hart, Jackson, Morgan, Madison, Oglethorpe, Oconee, Rabun, Stephens, Walton, and White, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Chattahoochee, Clay, Early, Harris, Heard, Meriwether, Marion, Muscogee, Quitman, Randolph, Schley, Stewart, Talbot, Taylor, Terrell, Troup, and Webster, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Bartow, Chattooga, Catoosa, Dade, Floyd, Gordon, Haralson, Murray, Paulding, Polk, Walker, and Whitfield, which shall constitute the northwestern division of said district. Terms of the district court for northern division of said district shall be held at Atlanta on the second Monday in March and the first Monday in October and at Gainsville on the fourth Mondays in April and November, and it shall be the duty of the judge to assign such cases, both civil and criminal, as may in his judgment be most convenient to the parties to said cases, and as may be in the interest of economical expenditures by the government; for the eastern division at Athens on the second Monday in April and the first Monday in November; for the western division, at Columbus on the first Mondays in May and December; and for the northwestern division, at Rome on the third Mondays in May and November. The clerk of the court for the northern district shall maintain an office in

St. 1901, p. 333, 4 F. S. A. 23, as amended by 21 Stat. at L. 62, 63, 25 Stat. at L. 671–2, 26 Stat. at L. 1110, 31 Stat. at L. 74, 31 Stat. at L. 818–9, 32 Stat. at L. 42, 32 Stat. at L. 550.

charge of himself or a deputy at Athens, at Columbus, and at Rome, which shall be kept open at all times for the transaction of the business of the court. The southern district shall include the territory embraced on the said first day of July, nineteen hundred and ten, in the counties of Appling, Bulloch, Bryan, Camden, Chatham, Emanuel, Effingham, Glynn, Jeff Davis, Liberty, Montgomery, McIntosh, Screven, Tatnall, Toombs, and Wayne, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Baldwin, Bibb, Butts, Crawford, Dodge, Dooly, Hancock, Houston, Jasper, Jones, Laurens, Macon, Monroe, Pike, Pulaski, Putnam, Sumter, Telfair, Twiggs, Upson, Wilcox, and Wilkinson, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Burke, Columbia, Glascock, Jefferson, Jenkins, Johnson, Lincoln, McDuffie, Richmond, Taliaferro, Washington, Wilkes, and Warren, which shall constitute the northeastern division; also the territory embraced on the date last mentioned in the counties of Berrien, Brooks, Charlton, Clinch, Coffee, Decatur, Echols, Grady, Irwin, Lowndes, Pierce, and Ware, which shall constitute the southwestern division; and also the territory embraced on the date last mentioned in the counties of Baker, Ben Hill, Calhoun, Crisp, Colquitt, Dougherty, Lee, Miller, Mitchell, Thomas, Tift, Turner, and Worth, which shall constitute the Albany division. Terms of the district court for the western division shall be held at Macon on the first Mondays in May and October; for the eastern division, at Savannah on the second Tuesdays in February, May, August, and November; for the northeastern division, at Augusta on the first Monday in April and the third Monday in November; for the southwestern division, at Valdosta on the second Mondays in June and December; and for the Albany division, at Albany on the third Mondays in June and December."

§ 110. Idaho.

§ 78, Judicial Code,[1] *36 Stat. at L. 1109, Comp. St. 1911, p. 162, 1912 Supp. F. S. A. v. 1, p. 166.* "The state of Idaho shall constitute one judicial district, to be known as the

[1] Re-enacting 27 Stat. at L. 72, Foster's Fed. Prac. (4th ed.) p. 237, 30 Stat. at L. 423, Comp. St 1901, 342, 4 F. S. A. 26, 27.

district of Idaho. It is divided into four divisions, to be known as the northern, central, southern, and eastern divisions. The territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bonner, Kootenai, and Shoshone, shall constitute the northern division of said district; and the territory embraced on the date last mentioned in the counties of Idaho, Latah, and Nez Perce, shall constitute the central division of said district; and the territory embraced on the date last mentioned in the counties of Ada, Boise, Blaine, Cassia, Twin Falls, Canyon, Elmore, Lincoln, Owyhee, and Washington, shall constitute the southern division of said district; and the territory embraced on the date last mentioned in the counties of Bannock, Bear Lake, Bingham, Custer, Fremont, Lemhi, and Oneida, shall constitute the eastern division of said district. Terms of the district court for the northern division of said district shall be held at Coeur d'Alene City on the fourth Monday in May and the third Monday in November; for the central division, at Moscow on the second Monday in May and the first Monday in November; for the southern division, at Boise City on the second Mondays in February and September; and for the eastern division, at Pocatello on the second Mondays in March and October. The clerk of the court shall maintain an office in charge of himself or a deputy at Coeur d'Alene City, at Moscow, at Boise City, and at Pocatello, which shall be open at all times for the transaction of the business of the court."

§ 111. Illinois.

§ 79, *Judicial Code*,[1] *36 Stat. at L. 1110, Comp. St. 1911, p. 163, 1912 Supp. F. S. A. v. 1, p. 166.* "The state of Illinois is divided into three districts, to be known as the northern, southern, and eastern districts of Illinois. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Cook, Dekalb, Dupage, Grundy, Kane, Kendall, Lake, Lasalle, McHenry, and Will, which shall constitute the eastern division; also the territory embraced on the date last mentioned in the counties of Boone, Carroll, Jo Daviess, Lee,

[1] Re-enacting § 536, R. S., Rose's Code, § 415, Foster's Fed. Prac. (4th ed.) p. 238, Comp. St. 1901, p. 344, 4 F. S. A. 27, with amendments thereto, 24 Stat. at L. 442.

Ogle, Stephenson, Whiteside, and Winnebago, which shall constitute the western division. Terms of the district court for the eastern division shall be held at Chicago on the first Mondays in February, March, April, May, June, July, September, October, and November, and the third Monday in December; and for the western division, at Freeport on the third Mondays in April and October. The clerk of the court for the northern district shall maintain an office in charge of himself or a deputy at Chicago and at Freeport, which shall be kept open at all times for the transaction of the business of the court. The marshal for the northern district shall maintain an office in the division in which he himself does not reside, and shall appoint at least one deputy who shall reside therein. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bureau, Fulton, Henderson, Henry, Knox, Livingston, McDonough, Marshall, Mercer, Putnam, Peoria, Rock Island, Stark, Tazewell, Warren, and Woodford, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Adams, Bond, Brown, Calhoun, Cass, Christian, Dewitt, Greene, Hancock, Jersey, Logan, McLean, Macon, Macoupin, Madison, Mason, Menard, Montgomery, Morgan, Pike, Sangamon, Schuyler, and Scott, which shall constitute the southern division. Terms of the district court for the northern division shall be held at Peoria on the third Mondays in April and October; for the southern division, at Springfield on the first Mondays in January and June, and at Quincy on the first Mondays in March and September. The clerk of the court for the southern district shall maintain an office in charge of himself or a deputy at Peoria, at Springfield, and at Quincy, which shall be kept open at all times for the transaction of the business of the court. The marshal for said southern district shall appoint at least one deputy residing in the said northern district, who shall maintain an office at Peoria. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alexander, Champaign, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Gallatin, Hamilton, Hardin, Iroquois, Jackson, Jasper, Jefferson, Johnson, Kankakee, Lawrence, Marion, Massac, Monroe, Moultrie, Perry, Piatt, Pope, Pulaski, Randolph, Richland, Saint Clair, Saline, Shelby, Union, Vermilion, Wabash, Washington, Wayne, White, and Wil-

liamson. Terms of the district court for the eastern district shall be held at Danville on the first Mondays in March and September; at Cairo on the first Mondays in April and October; and at East Saint Louis on the first Mondays in May and November. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Danville, at Cairo, and at East Saint Louis, which shall be kept open at all times for the transaction of the business of the court, and shall there keep the records, files, and documents pertaining to the court at that place."

§ 112. Indiana.

§ *80, Judicial Code,*[k] *36 Stat. at L. 1110, Comp. St. 1911, p. 164, 1912 Supp. F. S. A. v. 1, p. 168.* "The state of Indiana shall constitute one judicial district, to be known as the district of Indiana. Terms of the district court shall be held at Indianapolis on the first Tuesdays in May and November; at New Albany on the first Mondays in January and July; at Evansville on the first Mondays in April and October; at Fort Wayne on the second Tuesdays in June and December; and at Hammond on the third Tuesdays in April and October. The clerk of the court shall appoint four deputy clerks, one of whom shall reside and keep his office at New Albany, one at Evansville, one at Fort Wayne, and one at Hammond. Each deputy shall keep in his office full records of all actions and proceedings of the district court held at that place."

§ 113. Iowa.

§ *81, Judicial Code,*[l] *36 Stat. at L. 1111, Comp. St. 1911, p. 164, 1912 Supp. F. S. A. v. 1, p. 168, as amended act March 3, 1913, 37 Stat. at L. 735.* "The state of Iowa is divided into two judicial districts, to be known as the northern and southern districts of Iowa. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Allamakee, Dubuque, Buchanan, Clayton, Delaware, Fayette, Winneshiek, Howard, Chickasaw, Bremer, Blackhawk, Floyd,

[k] Re-enacting § 531, R. S. (see Ref. § 104, supra) Comp. St. 1901, p. 316, 4 F. S. A. 16.

[l] Re-enacting act of July 20, 1822, ch. 312, 22 Stat. at L. 172, Comp. St. 1901, p. 316, with amendments thereto, 26 Stat. at L. 767, Foster's Fed. Prac. (4th ed.) 240, 31 Stat. at L. 249, 4 F. S. A. 28–30.

Mitchell, and Jackson, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Jones, Cedar, Linn, Johnson, Iowa, Benton, Tama, Grundy, and Hardin, which shall constitute the Cedar Rapids division; also the territory embraced on the date last mentioned in the counties of Emmet, Palo Alto, Pochahontas, Calhoun, Carroll, Kossuth, Humboldt, Webster, Winnebago, Hancock, Wright, Hamilton, Worth, Cerro Gordo, Franklin, and Butler, which shall constitute the central division; also the territory embraced on the date last mentioned in the counties of Dickinson, Clay, Buena Vista, Sac, Osceola, O'Brien, Cherokee, Ida, Lyon, Sioux, Plymouth, Woodbury, and Monona, which shall constitute the western division. Terms of the district court for the eastern division shall be held at Dubuque on the fourth Tuesday in April and the first Tuesday in December and at Waterloo on the second Tuesdays in May and September; for the Cedar Rapids division, at Cedar Rapids on the first Tuesday in April and the fourth Tuesday in September; for the central division, at Fort Dodge on the second Tuesdays in June and November; and for the western division, at Sioux City on the fourth Tuesday in May and the third Tuesday in October. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Louisa, Henry, Des Moines, Lee, and Van Buren, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Marshall, Story, Boone, Greene, Guthrie, Dallas, Polk, Jasper, Poweshiek, Marion, Warren, and Madison, which shall constitute the central division of said district; also the territory embraced on the date last mentioned in the counties of Crawford, Harrison, Shelby, Audubon, Cass, Pottawattamie, Mills, and Montgomery, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Adair, Adams, Clarke, Decatur, Fremont, Lucas, Page, Ringgold, Taylor, Union, and Wayne, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Scott, Muscatine, Washington, and Clinton, which shall constitute the Davenport division of said district; also the territory embraced on the date last mentioned in the counties of Davis, Appanoose, Mahaska, Keokuk, Jefferson, Monroe, and Wapello, which shall constitute the

Ottumwa division of said court. Terms of the district court for the eastern division shall be held at Keokuk on the second Tuesday in April and the third Tuesday in October; for the central division, at Des Moines on the second Tuesday in May and the third Tuesday in November; for the western division, at Council Bluffs on the second Tuesday in March and the third Tuesday in September; for the southern division, at Creston on the fourth Tuesday in March and the first Tuesday in November; for the Davenport division, at Davenport on the fourth Tuesday in April and the first Tuesday in October; and for the Ottumwa division, at Ottumwa on the first Monday after the fourth Tuesday in March, and the first Monday after the third Tuesday in October. The clerk of the court for said district shall maintain an office in charge of himself or a deputy at Davenport and at Ottumwa, for the transaction of the business of said divisions."

§ 114. Kansas.

§ *82, Judicial Code,*[m] *36 Stat. at L. 1112, Comp. St. 1911, p. 165, 1912 Supp. F. S. A. v. 1, p. 168.* "The state of Kansas shall constitute one judicial district, to be known as the district of Kansas. It is divided into three divisions, to be known as the first, second, and third divisions of the district of Kansas. The first division shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Atchison, Brown, Chase, Cheyenne, Clay, Cloud, Decatur, Dickinson, Doniphan, Douglas, Ellis, Franklin, Geary, Gove, Graham, Jackson, Jefferson, Jewell, Johnson, Leavenworth, Lincoln, Logan, Lyon, Marion, Marshall, Mitchell, Morris, Nemaha, Norton, Osage, Osborne, Ottawa, Phillips, Pottawatomie, Rawlins, Republic, Riley, Rooks, Russell, Saline, Shawnee, Sheridan, Sherman, Smith, Thomas, Trego, Wabaunsee, Wallace, Washington, and Wyandotte. The second division shall include the territory embraced on the date last mentioned in the counties of Barber, Barton, Butler, Clark, Comanche, Cowley, Edwards, Ellsworth, Finney, Ford, Grant, Gray, Greeley, Hamilton, Harper, Harvey, Hodgeman, Haskell, Kingman, Kiowa, Kearny, Lane, McPherson, Morton,

[m] Re-enacting act of June 9, 1890, ch. 403, 26 Stat. at L. 129, with amendments thereto, 27 Stat. at L. 24, Foster's Fed. Prac. (4th ed.) pp. 208, 240, 4 F. S. A. 31.

Meade, Ness, Pratt, Pawnee, Reno, Rice, Rush, Scott, Sedgwick, Stafford, Stevens, Seward, Sumner, Stanton, and Wichita. The third division shall include the territory embraced on the said date last mentioned in the counties of Allen, Anderson, Bourbon, Cherokee, Coffey, Chautauqua, Crawford, Elk, Greenwood, Labette, Linn, Miami, Montgomery, Neosho, Wilson, and Woodson. Terms of the district court for the first division shall be held at Leavenworth on the second Monday in October; at Topeka on the second Monday in April; at Kansas City on the second Monday in January and the first Monday in October; and at Salina on the second Monday in May; but no cause, action, or proceeding shall be tried or considered at any term held at Salina unless by consent of all the parties thereto, or by order of the court for cause. Terms of the district court for the second division shall be held at Wichita on the second Mondays in March and September; and for the third division, at Fort Scott on the first Monday in May and the second Monday in November. The clerk of the district court shall appoint two deputies, one of whom shall reside and keep his office at Fort Scott, and the other at Wichita; and the marshal shall appoint a deputy who shall reside and keep his office at Fort Scott."

§ 115. Kentucky.

§ *83, Judicial Code,*[n] *36 Stat. at L. 1112, Comp. St. 1911, p. 166, 1912 Supp. F. S. A. v. 1, p. 170.* "The state of Kentucky is divided into two districts, to be known as the eastern and western districts of Kentucky. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Carroll, Trimble, Henry, Shelby, Anderson, Mercer, Boyle, Gallatin, Boone, Kenton, Campbell, Pendleton, Grant, Owen, Franklin, Bourbon, Scott, Woodford, Fayette, Jessamine, Garrard, Madison, Lincoln, Rockcastle, Pulaski, Wayne, Whitley, Bell, Knox, Harlan, Laurel, Clay, Leslie, Letcher, Perry, Owsley, Jackson, Estill, Lee, Breathitt, Knott, Pike, Floyd, Magoffin, Martin, Johnson, Lawrence, Boyd, Greenup, Carter, Elliott, Morgan, Wolfe, Powell, Menifee, Clark, Montgomery, Bath, Rowan, Lewis, Fleming, Mason, Bracken, Robertson, Nicholas, and Harrison,

n Re-enacting § 531, R. S. (see Ref. § 104, supra) Comp. St. 1901, p. 360, 4 F. S. A. 16, with amendments thereto, 25 Stat. at L. 389, 31 Stat. at L. 781–2–3, 4 F. S. A. 31, 32.

with the waters thereof. Terms of the district court for the eastern district shall be held at Frankfort on the second Monday in March and the fourth Monday in September; at Covington on the first Monday in April and the third Monday in October; at Richmond on the fourth Monday in April and the second Monday in November; at London on the second Monday in May and the fourth Monday in November; at Catlettsburg on the fourth Monday in May and the second Monday in December; and at Jackson on the first Monday in March and the third Monday in September: *Provided,* That suitable rooms and accommodations are furnished for holding court at Jackson, free of expense to the government until such time as a public building shall be erected there. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Oldham, Jefferson, Spencer, Bullitt, Nelson, Washington, Marion, Larue, Taylor, Cassey, Green, Adair, Russell, Clinton, Cumberland, Monroe, Metcalfe, Allen, Barren, Simpson, Logan, Warren, Butler, Hart, Edmonson, Grayson, Hardin, Meade, Breckinridge, Hancock, Daviess, Ohio, McLean, Muhlenberg, Todd, Christian, Trigg, Lyon, Caldwell, Livingston, Crittenden, Hopkins, Webster, Henderson, Union, Marshall, Calloway, McCracken, Graves, Ballard, Carlisle, Hickman, and Fulton, with the waters thereof. Terms of the district court for the western district shall be held at Louisville on the second Mondays in March and October; at Owensboro on the first Monday in May and the fourth Monday in November; at Paducah on the third Mondays in April and November; and at Bowling Green on the third Monday in May and the second Monday in December. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Frankfort, at Covington, at Richmond, at London, at Catlettsburg, and at Jackson; and the clerk for the western district shall maintain an office in charge of himself or a deputy at Louisville, at Owensboro, at Paducah, and at Bowling Green, each of which offices shall be kept open at all times for the transaction of the business of said court. The clerks of the courts for the eastern and western districts, upon issuing original process in a civil action, shall make it returnable to the court nearest to the county of the residence of the defendant, or of that defendant whose county is nearest to a court, and shall, immediately upon payment by the plaintiff of his fees accrued, send the papers filed to

the clerk of the court to which the process is made returnable; and whenever the process is not thus made returnable, any defendant may, upon motion, on or before the calling of the cause, have it transferred to the court to which it should have been sent had the clerk known the residence of the defendant when the action was brought."

§ 116. Louisiana.

§ 84, Judicial Code,[nn] *36 Stat. at L. 1113, Comp. St. 1911, p. 167, 1912 Supp. F. S. A. v. 1, p. 171.* "The state of Louisiana is divided into two judicial districts, to be known as the eastern and western districts of Louisiana. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the parishes of Assumption, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint James, Saint John the Baptist, Saint Mary, Saint Tammany, Tangipahoa, Terrebonne, and Washington, which shall constitute the New Orleans division; also the territory embraced on the date last mentioned in the parishes of Ascension, East Baton Rouge, East Feliciana, Livingston, Pointe Coupee, Saint Helena, West Baton Rouge, Iberville, and West Feliciana, which shall constitute the Baton Rouge division of said district. Terms of the district court for the New Orleans division shall be held at New Orleans on the third Mondays in February, May, and November; and for the Baton Rouge division, at Baton Rouge on the second Mondays in April and November. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at New Orleans and at Baton Rouge which shall be kept open at all times for the transaction of the business of the court. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the parishes of Saint Landry, Evangeline, Saint Martin, Lafayette, and Vermilion, which shall constitute the Opelousas division of said district; also the territory embraced on the date last mentioned in the parishes of Rapides, Avoyelles, Catahoula, La Salle, Grant, and Winn, which shall constitute the Alexandria division of said district; also the territory embraced on the said date last mentioned in the parishes of Caddo, De Soto, Bossier, Webster,

[nn] Re-enacting act of March 3, 1881, ch. 144, 21 Stat. at L. 507, Comp. St. 1901, p. 363, with amendments thereto, 25 Stat. at L. 388, Foster's Fed. Prac. (4th ed.) pp. 208, 241, 242, 25 Stat. at L. 438, 4 F. S. A. 33.

Claiborne, Bienville, Natchitoches, Sabine, and Red River, which shall constitute the Shreveport division of said district; also the territory embraced on the date last mentioned in the parishes of Ouachita, Franklin, Richland, Morehouse, East Carroll, West Carroll, Madison, Tensas, Concordia, Union, Caldwell, Jackson, and Lincoln, which shall constitute the Monroe division of said district; also the territory embraced on the date last mentioned in the parishes of Acadia, Calcasieu, Cameron, and Vernon, which shall constitute the Lake Charles division of said district. Terms of the district court for the Opelousas division shall be held at Opelousas on the first Mondays in January and June; for the Alexandria division, at Alexandria on the fourth Mondays in January and June; for the Shreveport division, at Shreveport on the third Mondays in February and October; for the Monroe division, at Monroe on the first Mondays in April and October; and for the Lake Charles division, at Lake Charles on the third Mondays in May and December. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Opelousas, at Alexandria, at Shreveport, at Monroe, and at Lake Charles, which shall be kept open at all times for the transaction of the business of the court."

§ 117. Maine.

§ *85, Judicial Code,*[o] *36 Stat. at L. 1114, Comp. St. 1911, p. 168, 1912 Supp. F. S. A. v. 1, p. 171, as amended act Dec. 22, 1911, ch. 7, 37 Stat. at L. 51.* "The state of Maine shall constitute one judicial district, to be known as the district of Maine. Terms of the district court shall be held at the times and places following: At Portland, on the first Tuesday in April, on the third Tuesday in September, and on the second Tuesday in December; at Bangor, on the first Tuesday in June: *Provided, however,* That in the year nineteen hundred and twelve a session shall be also held at Portland on the first Tuesday in February."

§ 118. Maryland.

§ *86, Judicial Code,*[p] *36 Stat. at L. 1114, Comp. St.*

[o] Re-enacting § 531, R. S. (see Ref. § 104, supra) Comp. St. 1901, p. 316, 4 F. S. A. 16.

[p] Re-enacting § 531, R. S. (see Ref. § 104, supra) Comp. St. 1901, p. 316, 4 F. S. A. 16.

1911, p. 168, 1912 Supp. F. S. A. v. 1, p. 172. "The state of Maryland shall constitute one judicial district, to be known as the district of Maryland. Terms of the district court shall be held at Baltimore on the first Tuesdays in March, June, September, and December; and at Cumberland on the second Monday in May and the last Monday in September. The clerk of the court shall appoint a deputy who shall reside and maintain an office at Cumberland, unless the clerk shall himself reside there; and the marshal shall also appoint a deputy who shall reside and maintain an office at Cumberland, unless he shall himself reside there."

§ 119. Massachusetts.

§ 87, Judicial Code,[q] *36 Stat. at L. 1114, Comp. St. 1911, p. 168, 1912 Supp. F. S. A. v. 1, p. 172.* "The state of Massachusetts shall constitute one judicial district, to be known as the district of Massachusetts. Terms of the district court shall be held at Boston on the third Tuesday in March, the fourth Tuesday in June, the second Tuesday in September, and the first Tuesday in December; and at Springfield, on the second Tuesdays in May and December: *Provided,* That suitable rooms and accommodations for holding court at Springfield shall be furnished free of expense to the government until such time as a Federal building shall be erected there for that purpose. The marshal and the clerk for said district shall each appoint at least one deputy, to reside in Springfield and to maintain an office at that place."

§ 120. Michigan.

§ 88, Judicial Code,[r] *36 Stat. at L. 1114, Comp. St. 1911, p. 169, 1912 Supp. F. S. A. v. 1, pp. 172, 173, as amended act July 9, 1912, ch. 222, 37 Stat. at L. 190.* "The state of Michigan is divided into two judicial districts, to be known as the eastern and western districts of Michigan. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alcona, Alpena, Arenac, Bay, Cheboygan, Clare, Crawford, Genesee, Gladwin, Gratiot, Huron, Iosco, Isabella,

[q] Re-enacting § 531, R. S. (see Ref. § 104, supra) Comp. St. 1901, p. 316, 4 F. S. A. 16.

[r] Re-enacting § 538, R. S., Foster's Fed. Prac. (4th ed.) p. 245, Comp. St. 1901, p. 368, 4 F. S. A 34, with amendments thereto, 20 Stat. at L. 175, 28 Stat. at L. 67.

Midland, Montmorency, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw, Shiawassee, and Tuscola, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Branch, Calhoun, Clinton, Hillsdale, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Sanilac, Washtenaw, and Wayne, which shall constitute the southern division of said district. Terms of the district court for the southern division shall be held at Detroit on the first Tuesdays in March, June, and November; for the northern division, at Bay City on the first Tuesdays in May and October, and at Port Huron in the discretion of the judge of said court and at such times as he shall appoint therefor. There shall also be held a special or adjourned term of the district court at Bay City for the hearing of admiralty causes, beginning in the month of February in each year. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft, which shall constitute the northern division; also the territory embraced on the said date last mentioned in the counties of Allegan, Antrim, Barry, Benzie, Berrien, Cass, Charlevoix, Eaton, Emmet, Grand Traverse, Ionia, Kalamazoo, Kalkaska, Kent, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montcalm, Muskegon, Newaygo, Oceana, Osceola, Ottawa, St. Joseph, Van Buren, and Wexford, which shall constitute the southern division of said district. Terms of the district court for the western district of Michigan for the southern division shall be held at Grand Rapids commencing on the first Tuesdays in March, June, October, and December; and for the northern division at Marquette commencing on the first Tuesdays in April and September; and at Sault Sainte Marie commencing on the second Tuesdays in January and July. All issues of fact shall be tried at the terms in the division where such suit shall be commenced. Actions *in rem* and admiralty may be brought in whichever division of the eastern district service can be had upon the *res*. Nothing herein contained shall prevent the district court of the western division from regulating, by general rule, the venue of transitory actions either at law or in equity, or from changing the same for cause. The clerk of the court for the western district shall reside and

keep his office at Grand Rapids, and shall also appoint a deputy clerk for said court held at Marquette, who shall reside and keep his office at that place. The marshal for said western district shall keep an office and a deputy marshal at Marquette. The clerk of the court for the eastern district shall keep his office at the city of Detroit, and shall appoint a deputy for the court held at Bay City, who shall reside and keep his office at that place. The marshal for said district shall keep an office and a deputy marshal at Bay City, and mileage on service of process in said northern division shall be computed from Bay City."

§ 121. Minnesota.

§ *89, Judicial Code,*[8] *36 Stat. at L. 1115, Comp. St. 1911, p. 170, 1912 Supp. F. S. A. v. 1, p. 173.* "The state of Minnesota shall constitute one judicial district, to be known as the district of Minnesota. It is divided into six divisions, to be known as the first, second, third, fourth, fifth, and sixth divisions. The first division shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Winona, Wabasha, Olmsted, Dodge, Steele, Mower, Fillmore, and Houston. The second division shall include the territory embraced on the date last mentioned in the counties of Freeborn, Faribault, Martin, Jackson, Nobles, Rock, Pipestone, Murray, Cottonwood, Watonwan, Blue Earth, Waseca, Lesueur, Nicollet, Brown, Redwood, Lyon, Lincoln, Yellow Medicine, Sibley, and Lac qui Parle. The third division shall include the territory embraced on the date last mentioned in the counties of Chisago, Washington, Ramsey, Dakota, Goodhue, Rice, and Scott. The fourth division shall include the territory embraced on the date last mentioned in the counties of Hennepin, Wright, Meeker, Kandiyohi, Swift, Chippewa, Renville, McLeod, Carver, Anoka, Sherburne, and Isanti. The fifth division shall include the territory embraced on the date last mentioned in the counties of Cook, Lake, Saint Louis, Itasca, Koochiching, Cass, Crow Wing, Aitkin, Carlton, Pine, Kanabec, Mille Lacs, Morrison, and Benton. The sixth division shall include the territory embraced on the date last mentioned in the counties of Stearns, Pope, Ste-

[8] Re-enacting § 531, R. S., Foster's Fed. Prac. (4th ed.) pp. 208, 246, Comp. St. 1901, p. 316, 4 F. S. A. 16, with amendments thereto, 26 Stat. at L. 2–3.

vens, Bigstone, Traverse, Grant, Douglas, Todd, Ottertail, Roseau, Wilkin, Clay, Becker, Wadena, Norman, Polk, Red Lake, Marshall, Kittson, Beltrami, Clearwater, Mahnomen, and Hubbard. Terms of the district court for the first division shall be held at Winona on the third Tuesdays in May and November; for the second division, at Mankato on the fourth Tuesdays in April and October; for the third division, at Saint Paul on the first Tuesdays in June and December; for the fourth division, at Minneapolis on the first Tuesdays in April and October; for the fifth division, at Duluth on the second Tuesdays in January and July; and for the sixth division, at Fergus Falls on the first Tuesday in May and second Tuesday in November. The clerk of the court shall appoint a deputy clerk at each place where the court is now required to be held at which the clerk shall not himself reside, who shall keep his office and reside at the place appointed for the holding of said court."

§ 122. Mississippi.

§ 90, Judicial Code,[t] *36 Stat. at L. 1116, Comp. St. 1911, p. 170, 1912 Supp. F. S. A. v. 1, p. 174, as amended act May 27, 1912, ch. 136, 37 Stat. at L. 118, 119.* "The state of Mississippi is divided into two judicial districts, to be known as the northern and southern districts of Mississippi. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alcorn, Attala, Chickasaw, Choctaw, Clay, Itawamba, Lee, Lowndes, Monroe, Oktibbeha, Pontotoc, Prentiss, Tishomingo, and Winston, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Benton, Coahoma, Calhoun, Carroll, De Soto, Grenada, Lafayette, Marshall, Montgomery, Panola, Tate, Tippah, Tunica, Union, Webster, and Yalobusha, which shall constitute the western division of said district. Also the territory embraced on the date last mentioned in the counties of Bolivar, Coahoma, Leflore, Quitman, Sunflower, Tallahatchie, and Funica, which shall constitute the Delta division of said district. The terms of the district court for the eastern division shall be held at Aberdeen on the first Mondays in April and October; and for the western division, at Oxford on the first Mondays

[t] Re-enacting act of June 15, 1882, ch. 218, 22 Stat. at L. 101, Comp. St. 1901, p. 377, 4 F. S. A. 37, with amendments thereto, 24 Stat. at L. 127, 24 Stat. at L. 430, 24 Stat. at L. 84, 25 Stat. at L. 78, 28 Stat. at L. 114, 30 Stat. at L. 995.

in June and December, and for the Delta division at Clarksdale on the fourth Mondays in January and July: *Provided*, That suitable rooms and accommodations for holding court at Clarksdale are furnished free of expense to the United States. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adams, Amite, Copiah, Covington, Franklin, Hinds, Holmes, Jefferson, Jefferson Davis, Lawrence, Lincoln, Madison, Pike, Rankin, Simpson, Smith, Scott, Wilkinson, and Yazoo, which shall constitute the Jackson division; also the territory embraced on the date last mentioned in the counties of Claiborne, Issaquena, Sharkey, Warren, and Washington, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Clarke, Jones, Jasper, Kemper, Lauderdale, Leake, Neshoba, Newton, Noxubee, and Wayne, which shall constitute the eastern division; also the territory embraced on the date last mentioned in the counties of Forrest, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Perry, and Pearl River, which shall constitute the southern division of said district. Terms of the district court for the Jackson division shall be held at Jackson on the first Mondays in May and November; for the western division, at Vicksburg on the first Mondays in January and July; for the eastern division, at Meridian on the second Mondays in March and September; and for the southern division, at Biloxi on the third Mondays in February and August. The clerk of the court for each district shall maintain an office in charge of himself or a deputy at each place in his district at which court is now required to be held, at which he shall not himself reside, which shall be kept open at all times for the transaction of the business of the court. The marshal for each of said districts shall maintain an office in charge of himself or a deputy at each place of holding court in his district."

§ 123. Missouri.

§ *91, Judicial Code,*[u] *36 Stat. at L. 1117, Comp. St. 1911, p. 171, 1912 Supp. F. S. A. v. 1, p. 175, as amended act Dec. 22, 1911, ch. 8, 37 Stat. at L. 51, 52.* "The state of Missouri is divided into two judicial districts, to be known as the eastern and western districts of Missouri. The eastern

[u] Re-enacting act of Feb. 28, 1887, ch. 271, 24 Stat. at L. 424, Comp. St. 1901, p. 384, and amendments thereto, 29 Stat. at L. 502, Foster's Fed. Prac. (4th ed.) p. 244, 31 Stat. at L. 739.

district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the city of Saint Louis and the counties of Audrain, Crawford, Dent, Franklin, Gasconade, Iron, Jefferson, Lincoln, Maries, Montgomery, Phelps, Saint Charles, Saint Francois, Sainte Genevieve, Saint Louis, Warren, and Washington, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Adair, Chariton, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Pike, Ralls, Randolph, Schuyler, Scotland, and Shelby, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Scott, Shannon, Stoddard, and Wayne, which shall constitute the southeastern division of said district. Terms of the district court for the eastern division shall be held at Saint Louis on the third Mondays in March and September, and at Rolla on the second Mondays in January and June: *Provided,* That suitable rooms and accommodations for holding court at Rolla are furnished free of expense to the United States; for the northern division, at Hannibal on the fourth Monday in May and the first Monday in December; and for the southeastern division, at Cape Girardeau on the second Mondays in April and October. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bates, Caldwell, Carroll, Cass, Clay, Grundy, Henry, Jackson, Johnson, Lafayette, Livingston, Mercer, Putnam, Ray, Saint Clair, Saline, and Sullivan, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Barton, Barry, Jasper, Lawrence, McDonald, Newton, Stone, and Vernon, which shall constitute the southwestern division; also the territory embraced on the date last mentioned in the counties at Andrew, Atchison, Buchanan, Clinton, Daviess, Dekalb, Gentry, Holt, Harrison, Nodaway, Platte, and Worth, which shall constitute the Saint Joseph division; also the territory embraced on the date last mentioned in the counties of Benton, Boone, Callaway, Cooper, Camden, Cole, Hickory, Howard, Miller, Moniteau, Morgan, Osage, and Pettis, which shall constitute the central division; also the territory embraced on the date last mentioned in the counties of Christian, Cedar, Dade, Dallas, Douglas, Greene, Howell, Laclede, Oregon, Ozark, Polk, Pulaski, Taney, Texas, Webster, and Wright, which shall constitute the southern division.

Terms of the district court for the western division shall be held at Kansas City on the fourth Monday in April and the first Monday in November, and at Chillicothe on the fourth Monday in May and the first Monday in December: *Provided,* That suitable rooms and accommodations for holding court at Chillicothe are furnished free of expense to the United States; for the southwestern division, at Joplin on the second Mondays in June and January; for the Saint Joseph division, at Saint Joseph on the first Monday in March and third Monday in September; for the central division, at Jefferson City on the third Mondays in March and October; and for the southern division, at Springfield on the first Mondays in April and October. The clerk of the court at Saint Louis in the eastern district shall maintain an office in charge of himself or a deputy at Saint Louis and Hannibal, and at such other places of holding court in said district as may be deemed necessary to the judge, which shall be kept open at all times for the transaction of the business of the court. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Kansas City, at Jefferson City, at Saint Joseph, at Chillicothe, at Joplin, and at Springfield, which shall be kept open at all times for the transaction of the business of the court. The marshal for each district shall also maintain an office in charge of himself or a deputy at each place at which court is now held in his district."

§ 124. Montana.

§ *92, Judicial Code,*▼ *36 Stat. at L. 1118, Comp. St. 1911, p. 173, 1912 Supp. F. S. A. v. 1, p. 176.* "The state of Montana shall constitute one judicial district to be known as the district of Montana. Terms of the district court shall be held at Helena on the first Mondays in April and November; at Butte on the first Tuesdays in February and September; at Great Falls on the first Mondays in May and October; at Missoula on the first Mondays in January and June; and at Billings on the first Mondays in March and August. Causes, civil and criminal, may be transferred by the court or judge thereof from Helena to Butte or from Butte to Helena, or from Helena or Butte to Great Falls, or from Great Falls to Helena or Butte, in said district, when the convenience of the parties or the ends of justice would be promoted by the transfer; and any interlocutory order may be made by the court or judge thereof in either place."

▼ Re-enacting 25 Stat. at L. 628, 4 F. S. A. 42.

§ 125. Nebraska.

§ *93, Judicial Code,*[w] *36 Stat. at L. 1118, Comp. St. 1911, p. 173, 1912 Supp. F. S. A. v. 1, pp. 176, 177.* "The state of Nebraska shall constitute one judicial district, to be known as the district of Nebraska. Said district is divided into eight divisions. The territory embraced on the first day of July, nineteen hundred and ten, in the counties of Douglas, Sarpy, Washington, Dodge, Colfax, Platte, Nance, Boone, Wheeler, Burt, Thurston, Dakota, Cuming, Cedar, and Dixon, shall constitute the Omaha division; the territory embraced on the date last mentioned in the counties of Madison, Antelope, Knox, Pierce, Stanton, Wayne, Holt, Boyd, Rock, Brown, and Keya Paha, shall constitute the Norfolk division; the territory embraced on the date last mentioned in the counties of Cherry, Sheridan, Dawes, Box Butte, and Sioux, shall constitute the Chadron division; the territory embraced on the date last mentioned in the counties of Hall, Merrick, Howard, Greeley, Garfield, Valley, Sherman, Buffalo, Custer, Loup, Blaine, Thomas, Hooker, and Grant, shall constitute the Grand Island division; the territory embraced on the date last mentioned in the counties of Lincoln, Dawson, Logan, McPherson, Keith, Deuel, Garden, Morrill, Cheyenne, Kimball, Banner, and Scott's Bluff, shall constitute the North Platte division; the territory embraced on the date last mentioned in the counties of Cass, Otoe, Johnson, Nemaha, Pawnee, Richardson, Gage, Lancaster, Saunders, Butler, Seward, Saline, Jefferson, Thayer, Fillmore, York, Polk, and Hamilton, shall constitute the Lincoln division; the territory embraced on the date last mentioned in the counties of Clay, Nuckolls, Webster, Adams, Kearney, Franklin, Harlan, and Phelps, shall constitute the Hastings division; and the territory embraced on the date last mentioned in the counties of Gosper, Furnas, Red Willow, Frontier, Hayes, Hitchcock, Dundy, Chase, and Perkins, shall constitute the McCook division. Terms of the district court for the Omaha division shall be held at Omaha on the first Monday in April and the fourth Monday in September; for the Norfolk division, at Norfolk on the third Monday in September; for the Chadron division, at Chadron on the second Monday in September; for the Grand Island division, at Grand Island on the second Monday in January; for the North Platte division, at North Platte on the second

[w] Re-enacting § 531, R. S. (see Ref. § 104, supra) Comp. St. 1901, p. 316, 4 F. S. A. 16.

Monday in June; for the Lincoln division, at Lincoln on the second Monday in May and the first Monday in October; for the Hastings division, at Hastings on the second Monday in March; and for the McCook division, at McCook on the first Monday in March: *Provided,* That where provision is made herein for holding court at places where there are no Federal buildings, a suitable room in which to hold court, together with light and heat, shall be provided by the city or county where such court is held, without any expense to the United States. The clerk of the court shall appoint a deputy for each division of the district in which he does not himself reside, who shall keep his office and reside at the place of holding court in the division for which he is appointed."

§ 126. Nevada.

§ *94, Judicial Code,*[x] *36 Stat. at L. 1118, Comp. St. 1911, p. 174, 1912 Supp. F. S. A. v. 1, p. 177.* "The state of Nevada shall constitute one judicial district, to be known as the district of Nevada. Terms of the district court shall be held at Carson City on the first Mondays in February, May, and October."

§ 127. New Hampshire.

§ *95, Judicial Code,*[y] *36 Stat. at L. 1119, Comp. St. 1911, p. 174, 1912 Supp. F. S. A. v. 1, p. 177, as amended act August 23, 1912, ch. 344, 37 Stat. at L. 357.* "The state of New Hampshire shall constitute one judicial district, to be known as the district of New Hampshire. Terms of the district court shall be held at Portsmouth on the last Tuesday in October; at Concord on the last Tuesday in April and second Tuesday in December; and at Littleton on the third Tuesday in September."

§ 128. New Jersey.

§ *96, Judicial Code,*[z] *36 Stat. at L. 1119, Comp. St. 1911, p. 174, 1912 Supp. F. S. A. v. 1, p. 177, as amended act Feb. 14, 1913, ch. 53, 37 Stat. at L. 675.* The state of New

[x] Re-enacting § 531, R. S. (see Ref. § 104, supra) Comp. St. 1901, p. 316, 4 F. S. A. 16.

[y] Re-enacting § 531, R. S. (see Ref. § 104, supra) Comp. St. 1901, p. 316, 4 F. S. A. 16.

[z] Re-enacting § 531, R. S. (see Ref. § 104, supra) Comp. St. 1901, p. 316, 4 F. S. A. 16.

Jersey shall constitute one judicial district, to be known as the district of New Jersey. Terms of the district court shall be held at Newark on the first Tuesday in April and the first Tuesday in November; and at Trenton on the third Tuesday in January and the second Tuesday in September of each year. The clerk of the court for the district of New Jersey shall maintain an office, in charge of himself or a deputy, at Newark and at Trenton, each of which offices shall be kept open at all times for the transaction of the business of the court; and the marshal shall also maintain an office, in charge of himself or a deputy, at Newark and at Trenton, each of which offices shall be kept open at all times for the transaction of the business of the court."

§ 129. New Mexico.

§ *13, Act June 20, 1910, ch. 310, Comp. St. 1911, p. 174, 1912 Supp. F. S. A. p. 364.* "That the state, when admitted as aforesaid, shall constitute one judicial district, and the circuit and district courts of said district shall be held at the capital of said state, and the said district shall, for judicial purposes, be attached to the eighth judicial circuit. There shall be appointed for said district one district judge, one United States attorney, and one United States marshal. The judge of said district shall receive a yearly salary the same as other similar judges of the United States, payable as provided for by law, and shall reside in the district to which he is appointed. There shall be appointed clerks of said courts, who shall keep their offices at the capital of said state. The regular terms of said courts shall be held on the first Monday in April and the first Monday in October of each year. The circuit and district courts for said district, and the judges thereof, respectively, shall possess the same powers and jurisdiction and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney, and the clerks of the circuit and district courts of said district, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States, and shall, for the services they may perform, receive the fees and compensation now allowed by law to officers performing similar services for the

United States in the Territory of New Mexico." (36 Stat. at L. 565.)

§ 130. New York.

§ 97, *Judicial Code*,[a] *36 Stat. at L. 1119, Comp. St. 1911, p. 175, 1912 Supp. F. S. A. v. 1, p. 177.* "The state of New York is divided into four judicial districts, to be known as the northern, eastern, southern, and western districts of New York. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Albany, Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, Saint Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Warren, and Washington, with the waters thereof. Terms of the district court for said district shall be held at Albany on the second Tuesday in February; at Utica on the first Tuesday in December; at Binghamton on the second Tuesday in June; at Auburn on the first Tuesday in October; at Syracuse on the first Tuesday in April; and, in the discretion of the judge of the court, one term annually at such time and place within the counties of Saratoga, Onondaga, Saint Lawrence, Clinton, Jefferson, Oswego, and Franklin, as he may from time to time appoint. Such appointment shall be made by notice of at least twenty days published in a newspaper published at the place where said court is to be held. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Richmond, Kings, Queens, Nassau, and Suffolk, with the waters thereof. Terms of the district court for said district shall be held at Brooklyn on the first Wednesday in every month. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Columbia, Dutchess, Greene, New York, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester, with the waters thereof. Terms of the district court for said district shall be held at New York city on the first Tuesday in each month. The district courts of the southern and eastern districts shall have

[a] Drawn from § 597, R. S., Rose's Code, § 473, Foster's Fed. Prac. (4th ed.) p. 682, Comp. St. 1901, pp. 394, 397, 4 F. S. A. 678, and § 599, R. S. Comp. St. 1901, p. 395, 4 F. S. A. 716.

concurrent jurisdiction over the waters within the counties of New York, Kings, Queens, Nassau, Richmond, and Suffolk, and over all seizures made and all matters done in such waters; all processes or orders issued within either of said courts or by any judge thereof shall run and be executed in any part of said waters. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates, with the waters thereof. Terms of the district court for said district shall be held at Elmira on the second Tuesday in January; at Buffalo on the second Tuesdays in March and November; at Rochester on the second Tuesday in May; at Jamestown on the second Tuesday in July; at Lockport on the second Tuesday in October; and at Canandaigua on the second Tuesday in September. The regular sessions of the district court for the western district for the hearing of motions and for proceedings in bankruptcy and the trial of causes in admiralty, shall be held at Buffalo at least two weeks in each month of the year, except August, unless the business is sooner disposed of. The times for holding the same and such other special sessions as the court shall deem necessary shall be fixed by the rules of the court. All process in admiralty causes and proceedings shall be made returnable at Buffalo. The judge of any district in the state of New York may perform the duties of the judge of any other district in such state upon the request of any resident judge entered in the minutes of his court; and in such cases such judge shall have the same powers as are vested in the resident judge."

§ 131. North Carolina.

§ *98, Judicial Code,*[b] *36 Stat. at L. 1120, Comp. St. 1911, p. 176, 1912 Supp. F. S. A. v. 1, p. 178.* "The state of North Carolina is divided into two districts, to be known as the eastern and western districts of North Carolina. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of

[b] Re-enacting § 543, R. S., Foster's Fed. Prac. (4th ed.) p. 252, Comp. St. 1901, p. 397, 4 F. S. A. 44, and amendment thereto, 28 Stat. at L. 274–5.

Beaufort, Bertie, Bladen, Brunswick, Camden, Chatham, Cumberland, Currituck, Craven, Columbus, Chowan, Carteret, Dare, Duplin, Durham, Edgecomb, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Lee, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Robeson, Richmond, Sampson, Scotland, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson. Terms of the district court for the eastern district shall be held at Elizabeth City on the second Mondays in April and October; at Washington on the third Mondays in April and October; at Newbern on the fourth Mondays in April and October; at Wilmington on the second Monday after the fourth Mondays in April and October; and at Raleigh on the fourth Monday after the fourth Mondays in April and October: *Provided,* That the city of Washington shall provide and furnish at its own expense a suitable and convenient place for holding the district court at Washington until a courthouse shall be constructed by the United States. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Raleigh, at Wilmington, at Newbern, at Elizabeth City, and at Washington, which shall be kept open at all times for the transaction of the business of the court. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alamance, Alexander, Ashe, Alleghany, Anson, Buncombe, Burke, Caswell, Cabarrus, Catawba, Cleveland, Caldwell, Clay, Cherokee, Davidson, Davie, Forsyth, Guilford, Gaston, Graham, Henderson, Haywood, Iredell, Jackson, Lincoln, Montgomery, Mecklenburg, Mitchell, McDowell, Madison, Macon, Orange, Polk, Randolph, Rockingham, Rowan, Rutherford, Stanley, Stokes, Surry, Swain, Transylvania, Union, Wilkes, Watauga, Yadkin, and Yancey. Terms of the district court for the western district shall be held at Greensboro on the first Mondays in June and December; at Statesville on the third Mondays in April and October; at Salisbury on the fourth Mondays in April and October; at Asheville on the first Mondays in May and November; at Charlotte on the first Mondays in April and October; and at Wilkesboro on the fourth Mondays in May and November. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at

Greensboro, at Asheville, at Statesville, and at Wilkesboro, which shall be kept open at all times for the transaction of the business of the court."

§ 132. North Dakota.

§ 99, Judicial Code,[c] *36 Stat. at L. 1121, Comp. St. 1911, p. 177, 1912 Supp. F. S. A. v. 1, p. 179, as amended Feb. 5, 1912, ch. 28, 37 Stat. at L. 59.* "The state of North Dakota shall constitute one judicial district, to be known as the district of North Dakota. The territory embraced on the first day of July, nineteen hundred and ten, in the counties of Burleigh, Stutsman, Logan, McIntosh, Emmons, Kidder, Foster, Wells, McLean, Sheridan, Adams, Bowman, Dunn, Hettinger, Morton, Stark, and McKenzie, shall constitute the southwestern division of said district; and the territory embraced on the date last mentioned in the counties of Cass, Richland, Barnes, Dickey, Sargent, Lamoure, Ransom, Griggs, and Steele, shall constitute the southeastern division; and the territory embraced on the date last mentioned in the counties of Grand Forks, Traill, Walsh, Pembina, Cavalier, and Nelson, shall constitute the northeastern division; and the territory embraced on the date last mentioned in the counties of Ramsey, Eddy, Benson, Towner, Rolette, Bottineau, Pierce, and McHenry, shall constitute the northwestern division; and the territory embraced on the date last mentioned in the counties of Ward, Williams, Montraille, Burk, and Renville, shall constitute the western division. The several Indian reservations and parts thereof within said state shall constitute a part of the several divisions within which they are respectively situated. Terms of the district court for the southwestern division shall be held at Bismarck on the first Tuesday in March; for the southeastern division, at Fargo on the third Tuesday in May; for the northeastern division, at Grand Forks on the second Tuesday in November; for the northwestern division, at Devils Lake on the first Tuesday in July; and for the western division, at Minot on the second Tuesday in October. The clerk of the court shall maintain an office in charge of himself or a deputy at each place at which court is now held in his district."

[c] Re-enacting act of April 26, 1890, ch. 161, 26 Stat. at L. 67, Foster's Fed. Prac. (4th ed.) pp. 208, 252, Comp. St. 1901, p. 399, 4 F. S. A. 45.

§ 133. Ohio.

§ *100, Judicial Code,*[d] *36 Stat. at L. 1121, Comp. St. 1911, p. 178, 1912 Supp. F. S. A. v. 1, p. 180.* "The state of Ohio is divided into two judicial districts, to be known as the northern and southern districts of Ohio. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Ashland, Ashtabula, Cuyahoga, Carroll, Columbiana, Crawford, Geauga, Holmes, Lake, Lorain, Medina, Mahoning, Portage, Richland, Summit, Stark, Tuscarawas, Trumbull, and Wayne, which shall constitute the eastern division; also the territory embraced on the date last mentioned in the counties of Auglaize, Allen, Defiance, Erie, Fulton, Henry, Hancock, Hardin, Huron, Lucas, Mercer, Marion, Ottawa, Paulding, Putnam, Seneca, Sandusky, Van Wert, Williams, Wood, and Wyandotte, which shall constitute the western division of said district. Terms of the district court for the eastern division shall be held at Cleveland on the first Tuesdays in February, April, and October, and at Youngstown on the first Tuesday after the first Monday in March; and for the western division, at Toledo on the last Tuesdays in April and October. Grand and petit jurors summoned for service at a term of court to be held at Cleveland may, if in the opinion of the court the public convenience so requires, be directed to serve also at the term then being held or authorized to be held at Youngstown. Crimes and offenses committed in the eastern division shall be cognizable at the terms held at Cleveland, or at Youngstown, as the court may direct. Any suit brought in the eastern division may, in the discretion of the court, be tried at the term held at Youngstown. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Lawrence, Miami, Montgomery, Preble, Scioto, Shelby, and Warren, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Athens, Belmont, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Knox, Licking, Logan, Madison, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway,

[d] Re-enacting § 544. R. S., Comp. St. 1901, p. 401, 4 F. S. A. 46, with amendments thereto, 20 Stat. at L. 101, 21 Stat. at L. 63, 26 Stat. at L. 799.

Pike, Ross, Union, Vinton, and Washington, which shall constitute the eastern division of said district. Terms of the district court for the western division shall be held at Cincinnati on the first Tuesdays in February, April, and October; and for the eastern division, at Columbus on the first Tuesdays in June and December: *Provided,* That terms of the district court for the southern district shall be held at Dayton on the first Mondays in May and November. Prosecutions for crimes and offenses committed in any part of said district shall also be cognizable at the terms held at Dayton. All suits which may be brought within the southern district, or either division thereof, may be instituted, tried, and determined at the terms held at Dayton."

§ 134. Oklahoma.

§ *101, Judicial Code,*[e] *36 Stat. at L. 1122, Comp. St. 1911, p. 179, 1912 Supp. F. S. A. v. 1, p. 181.* "The state of Oklahoma is divided into two judicial districts, to be known as the eastern and the western districts of Oklahoma. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adair, Atoka, Bryan, Craig, Cherokee, Creek, Choctaw, Coal, Carter, Delaware, Garvin, Grady, Haskell, Hughes, Johnson, Jefferson, Latimer, Le Flore, Love, McClain, Mayes, Muskogee, McIntosh, McCurtain, Murray, Marshall, Nowata, Ottawa, Okmulgee, Ofuskee, Pittsburg, Pushmataha, Pontotoc, Rogers, Stephens, Sequoyah, Seminole, Tulsa, Washington, and Wagoner. Terms of the district court for the eastern district shall be held at Muskogee on the first Monday in January; at Vinita on the first Monday in March; at Tulsa on the first Monday in April; at South McAlester on the first Monday in June; at Ardmore on the first Monday in October; and at Chickasha on the first Monday in November in each year. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Majors, Noble, Oklahoma, Osage, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward. Terms of the district court for the

[e] New legislation, Oklahoma being new state.

district shall be held at Guthrie on the first Monday in January; at Oklahoma City on the first Monday in March; at Enid on the first Monday in June; at Lawton on the first Monday in September; and at Woodward on the first Monday in November: *Provided,* That suitable rooms and accommodations for holding court at Woodward are furnished free of expense to the United States. The clerk of the district court for the eastern district shall keep his office at Muskogee, and the clerk for the western district at Guthrie, and shall maintain an office in charge of himself or a deputy at Oklahoma City.

§ 135. Oregon.

§ *102, Judicial Code,*[f] *36 Stat. at L. 1122, Comp. St. 1911, p. 179, 1912 Supp. F. S. A. v. 1, p. 181.* "The state of Oregon shall constitute one judicial district, to be known as the district of Oregon. Terms of the district court shall be held at Portland on the first Mondays in March, July, and November; at Pendleton on the first Tuesday in April; and at Medford on the first Tuesday in October. The marshal and the clerk for said district shall each appoint, in the manner provided by law, at least one deputy at Pendleton and one at Medford, who shall reside and maintain an office at each of said places."

§ 136. Pennsylvania.

§ *103, Judicial Code,*[g] *36 Stat. at L. 1123, Comp. St. 1911, p. 180, 1912 Supp. F. S. A. v. 1, p. 182, as amended act March 3, 1913, ch. 113, 37 Stat. at L. 730, 731.* "The state of Pennsylvania is divided into three judicial districts, to be known as the eastern, middle, and western districts of Pennsylvania. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton, Philadelphia, and Schuylkill. Terms of the district court shall be held at Philadelphia on the second Mondays in March and June, the third Monday in September, and the second Monday in December, each term to continue until the succeeding

[f] Re-enacting § 531, R. S. (see Ref. § 104, supra) Comp. St. 1901, p. 316, 4 F. S. A. 16.

[g] Re-enacting § 545, R. S., Foster's Fed. Prac. (4th ed.) p. 255, Comp. St. 1901, p. 405, 4 F. S. A. 47, with amendments thereto, 31 Stat. at L. 880.

term begins. The middle district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adams, Bradford, Cameron, Carbon, Center, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lebanon, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York. Terms of the district court shall be held at Scranton on the second Monday in March and the third Monday in October; at Harrisburg on the first Mondays in May and December; at Sanbury on the second Monday in January; and at Williamsport on the first Monday in June. The clerk of the court for the middle district shall maintain an office in charge of himself or a deputy at Harrisburg; and civil suits instituted at that place shall be tried there, if either party resides nearest that place of holding court, unless by consent of parties they are removed to another place for trial. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland. Terms of the district court shall be held at Pittsburg on the first Monday in May and the third Monday in October; and at Erie on the third Monday in July and the second Monday in January."

§ 137. Rhode Island.

§ *104, Judicial Code,*[h] *36 Stat. at L. 1123, Comp. St. 1911, p. 180, 1912 Supp. F. S. A. v. 1, p. 182, as amended Feb. 1, 1912, ch. 27, 37 Stat. at L. 59.* "The state of Rhode Island shall constitute one judicial district, to be known as the district of Rhode Island; terms of the district court shall be held at Providence on the fourth Tuesday in May and the third Tuesday in November."

§ 138. South Carolina.

§ *105, Judicial Code,*[i] *36 Stat. at L. 1123, Comp. St. 1911, p. 180, 1912 Supp. F. S. A. v. 1, p. 182, as amended*

[h] Re-enacting § 531, R. S. (see Ref. § 104, supra) Comp. St. 1901, p. 316, 4 F. S. A. 16, amended Feb. 1, 1912, ch. 27, 37 Stat. at L. 59.

[i] Re-enacting § 546, R. S., Rose's Code, § 285, Foster's Fed. Prac. (4th

February 5, 1912, ch. 28, 37 Stat. at L. 59, 60. "The state of South Carolina is divided into two districts, to be known as the eastern and western districts of South Carolina. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Abbeville, Anderson, Cherokee, Chester, Edgefield, Fairfield, Greenville, Greenwood, Lancaster, Laurens, Newberry, Oconee, Pickens, Saluda, Spartanburg, Union, and York. Terms of the district court for the western district shall be held at Greenville on the third Tuesdays in April and October. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Aiken, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Hampton, Horry, Kershaw, Lee, Lexington, Marion, Marlboro, Orangeburg, Richland, Sumter, and Williamsburg. Terms of the district court for the eastern district shall be held at Charleston on the first Tuesdays in June and December; at Columbia on the third Tuesday in January and the first Tuesday in November, the latter term to be solely for the trial of civil cases; and at Florence on the first Tuesday in March. The offices of the clerk of the district court shall be at Greenville, and at Charleston; and the clerk shall reside in one of said cities and have a deputy in the other."

§ 139. South Dakota.

§ *106, Judicial Code,*[1] *36 Stat. at L. 1123, Comp. St. 1911, p. 181, 1912 Supp. F. S. A. v. 1, p. 183.* "The state of South Dakota shall constitute one judicial district, to be known as the district of South Dakota. The territory embraced on the first day of July, nineteen hundred and ten, in the counties of Aurora, Beadle, Bon Homme, Brookings, Brule, Charles Mix, Clay, Davison, Douglas, Gregory, Hanson, Hutchinson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, and Yankton, and in the Yankton Indian reservation, shall constitute the southern division of said district; the territory embraced on the date last mentioned in the counties of Brown, Campbell, Clark, Codington, Corson, Day, Deuel, Edmunds,

ed.) p. 256, Comp. St. 1901, p. 407, 4 F. S. A. 48, which section is expressly repealed by § 297, Judicial Code.

[1] Re-enacting act of November 3, 1893, ch. 10, 28 Stat. at L. 5, Foster's Fed. Prac. (4th ed.) pp. 237, 257, Comp. St. 1901, p. 410, 4 F. S. A. 49.

Grant, Hamlin, McPherson, Marshall, Roberts, Schnasse, Spink, and Walworth, and in the Sisseton and Wahpeton Indian reservation, and in that portion of the Standing Rock Indian reservation lying in South Dakota, shall constitute the northern division; the territory embraced on the date last mentioned in the counties of Armstrong, Buffalo, Dewey, Faulk, Hand, Hughes, Hyde, Jerauld, Lyman, Potter, Stanley, and Sully, and in the Cheyenne River, Lower Brule, and Crow Creek Indian reservations, shall constitute the central division; and the territory embraced on the date last mentioned in the counties of Bennett, Butte, Custer, Fall River, Harding, Lawrence, Meade, Mellette, Pennington, Perkins, Shannon, Todd, Tripp, Washabaugh, and Washington, and in the Rosebud and Pine Ridge Indian reservations, shall constitute the western division. Terms of the district court for the southern division shall be held at Sioux Falls on the first Tuesday in April and the third Tuesday in October; for the northern division, at Aberdeen on the first Tuesday in May and the second Tuesday in November; for the central division, at Pierre on the second Tuesday in June and the first Tuesday in October; and for the western division, at Deadwood on the third Tuesday in May and the first Tuesday in September. The clerk of the district court shall maintain an office in charge of himself or a deputy at Sioux Falls, at Pierre, at Aberdeen, and at Deadwood, which shall be kept open for the transaction of the business of the court."

§ 140. Tennessee.

§ *107, Judicial Code,*[k] *36 Stat. at L. 1124, Comp. St. 1911, p. 182, 1912 Supp. F. S. A. v. 1, p. 183, as amended act August 20, 1912, ch. 306, 37 Stat. at L. 314, 315.* "The state of Tennessee is divided into three districts, to be known as the eastern, middle, and western districts of Tennessee. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bledsoe, Bradley, Hamilton, James, McMinn, Marion, Meigs, Polk, Rhea, and Sequatchie, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Anderson, Blount, Campbell, Claiborne, Grainger, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Sevier, Scott, and Union, which shall constitute the northern divi-

[k] Re-enacting § 547, R. S., Foster's Fed. Prac. (4th ed.) p. 259, Comp.

sion of said district; also the territory embraced on the date last mentioned in the counties of Carter, Cocke, Greene, Hamblen, Hancock, Hawkins, Johnson, Sullivan, Unicoi, and Washington, which shall constitute the northeastern division of said district. Terms of the district court for the southern division of said district shall be held at Chattanooga on the fourth Monday in April and the second Monday in November; for the northern division, at Knoxville on the fourth Monday in May and the first Monday in December; and for the northeastern division, at Greeneville on the first Monday in March and the third Monday in September. The middle district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Grundy, Hickman, Humphreys, Houston, Lawrence, Lewis, Lincoln, Marshall, Maury, Montgomery, Moore, Robertson, Rutherford, Stewart, Sumner, Trousdale, Warren, Wayne, Williamson, and Wilson, which shall constitute the Nashville division of said district; also the territory embraced on the date last mentioned in the counties of Clay, Cumberland, Dekalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith, Van Buren, and White, which shall constitute the northeastern division of said district. Terms of the district court for the Nashville division of said district shall be held at Nashville on the second Monday in March and the fourth Monday in September; and for the northeastern division, at Cookeville on the third Monday in April and the first Monday in November: *Provided,* That suitable accommodations for holding court at Cookeville shall be provided by the county or municipal authorities without expense to the United States. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Dyer, Fayette, Haywood, Lauderdale, Shelby, and Tipton, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Benton, Carroll, Chester, Crockett, Decatur, Gibson, Hardeman, Hardin, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry, and Weakley, including the waters of the Tennessee River to low-water mark on the eastern shore thereof wherever such

St. 1901, p. 413, 4 F. S. A. 50, with amendments thereto, 20 Stat. at L. 235, 21 Stat. at L. 175, 22 Stat. at L. 402, 23 Stat. at L. 280, 29 Stat. at L. 91, 31 Stat. at L. 5, 31 Stat. at L. 183.

river forms the boundary line between the western and middle districts of Tennessee, from the north line of the state of Alabama north to the point in Henry county, Tennessee, where the south boundary line of the state of Kentucky strikes the east bank of the river, which shall constitute the eastern division of said district. Terms of the district court for the western division of said district shall be held at Memphis on the fourth Mondays in May and November; and for the eastern division, at Jackson on the fourth Mondays in April and October. The clerk of the court for the western district shall appoint a deputy who shall reside at Jackson. The marshal for the western district shall appoint a deputy who shall reside at Jackson. The marshal for the eastern district shall appoint a deputy who shall reside at Chattanooga. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Knoxville, at Chattanooga and at Greenville, which shall be kept open at all times for the transaction of the business of the court."

§ 141. Texas.

§ *108, Judicial Code,*[1] *36 Stat. at L. 1125, Comp. St. 1191, p. 183, 1912 Supp. F. S. A. v. 1, p. 185.* "The state of Texas is divided into four districts to be known as the northern, eastern, western, and southern districts of Texas. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Dallas, Ellis, Hunt, Johnson, Kaufman, Navarro, and Rockwall, which shall constitute the Dallas division; also the territory embraced on the date last mentioned in the counties of Archer, Baylor, Clay, Comanche, Erath, Foard, Hardeman, Hood, Jack, Palo Pinto, Parker, Tarrant, Wichita, Wilbarger, Wise, and Young, which shall constitute the Fort Worth division; also the territory embraced on the date last mentioned in the counties of Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, King, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler,

[1] Re-enacting act of March 11, 1902, ch. 183, 32 Stat. at L. 64, 4 F. S. A. 54.

which shall constitute the Amarillo division; also the territory embraced on the date last mentioned in the counties of Andrews, Borden, Callahan, Dawson, Eastland, Fisher, Gaines, Garza, Haskell, Howard, Jones, Kent, Knox, Lynn, Martin, Midland, Mitchell, Nolan, Scurry, Shackelford, Stephens, Stonewall, Taylor, Terry, Throckmorton, and Yoakum, which shall constitute the Abilene division; also the territory embraced on the date last mentioned in the counties of Brown, Coke, Coleman, Concho, Crockett, Glasscock, Irion, Menard, Mills, Runnels, Schleicher, Sterling, Sutton, Tom Green, and Upton, which shall constitute the San Angelo division of the said district. Terms of the district court for the Dallas division shall be held at Dallas on the second Monday in January and the first Monday in May; for the Fort Worth division, at Fort Worth on the first Monday in November and the second Monday in March; for the Amarillo division, at Amarillo on the third Monday in April and the fourth Monday in September; for the Abilene division, at Abilene on the first Monday in October and the second Monday in April; and for the San Angelo division, at San Angelo on the third Monday in October and the fourth Monday in April. The clerk of the court for the northern district shall maintain an office in charge of himself or a deputy at Dallas, at Fort Worth, at Amarillo, at Abilene, and at San Angelo, which shall be kept open at all times for the transaction of the business of the court. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Anderson, Angelina, Cherokee, Gregg, Henderson, Houston, Nacogdoches, Panola, Rains, Rusk, Smith, Van Zandt, and Wood, which shall constitute the Tyler division; also the territory embraced on the date last mentioned in the counties of Hardin, Jasper, Jefferson, Liberty, Newton, Orange, Sabine, San Augustine, Shelby, and Tyler, which shall constitute the Beaumont division; also the territory embraced on the date last mentioned in the counties of Collin, Cook, Denton, Grayson, and Montague, which shall constitute the Sherman division; also the territory embraced on the date last mentioned in the counties of Camp, Cass, Harrison, Hopkins, Marion, Morris and Upshur, which shall constitute the Jefferson division; also the territory embraced on the date last mentioned in the counties of Delta, Fannin, Red River, and Lamar, which shall constitute the Paris division; also the territory embraced on

the date last mentioned in the counties of Bowie, Franklin, and Titus, which shall constitute the Texarkana division. Terms of the district court for the Tyler division shall be held at Tyler on the fourth Mondays in January and April; for the Jefferson division, at Jefferson on the first Monday in October and the third Monday in February; for the Beaumont division, at Beaumont on the third Monday in November and the first Monday in April; for the Sherman division, at Sherman on the first Monday in January and the third Monday in May; for the Paris division, at Paris on the third Monday in October and the first Monday in March; and for the Texarkana division, at Texarkana on the third Monday in March and the first Monday in November. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Sherman, at Beaumont, and at Texarkana, which shall be kept open at all times for the transaction of the business of said court. The western district [see amendment below] shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington, and Williamson, which shall constitute the Austin division; also the territory embraced on the date last mentioned in the counties of Atascosa, Bandera, Bexar, Comal, Dimmit, Edwards, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, and Wilson, which shall constitute the San Antonio division; also the territory embraced on the date last mentioned in the counties of Brewster, Crane, Ector, El Paso, Jeff Davis, Loving, Reeves, Presidio, Ward, and Winkler, which shall constitute the El Paso division; also the territory embraced on the date last mentioned in the counties of Bell, Bosque, Coryell, Falls, Hamilton, Freestone, Hill, Leon, Limestone, McLennan, Milam, Robertson, and Somervell, which shall constitute the Waco division; also the territory embraced on the date last mentioned in the counties of Kinney, Maverick, Pecos, Terrell, Uvalde, Valverde, and Zavalla, which shall constitute the Del Rio division. Terms of the district court for the Austin division shall be held at Austin on the fourth Monday in January and the second Monday in June; for the Waco division, at Waco on the fourth Monday in February and the second Monday in November; for the San Antonio division, at San Antonio on the first Monday in May and

the third Monday in December; for the El Paso division, at El Paso on the first Monday in April and the first Monday in October; and for the Del Rio division, at Del Rio on the third Monday in March and the fourth Monday in October. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Austin, El Paso, and at Del Rio, which shall be kept open at all times for the transaction of business. The southern district [see amendment below] shall include the territory embraced on the first of July, nineteen hundred and ten, in the counties of Duval, La Salle, McMullen, Nueces, Webb, and Zapata, which shall constitute the Laredo division; also the territory embraced on the date last mentioned in the counties of Cameron, Hidalgo, and Starr, which shall constitute the Brownsville division; also the territory embraced on the date last mentioned in the counties of Austin, Brazoria, Chambers, Galveston, Fort Bend, Matagorda, and Wharton, which shall constitute the Galveston division; also the territory embraced on the date last mentioned in the counties of Brazos, Colorado, Fayette, Grimes, Harris, Lavaca, Madison, Montgomery, Polk, San Jacinto, Trinity, Walker, and Waller, which shall constitute the Houston division; also the territory embraced on the date last mentioned in the counties of Bee, Calhoun, Dewitt, Goliad, Jackson, Live Oak, Refugio, Aransas, San Patricio, and Victoria, which shall constitute the Victoria division. Terms of the district court for the Galveston division shall be held at Galveston on the second Monday in January and the first Monday in June; for the Houston division, at Houston on the fourth Mondays in February and September; for the Laredo division, at Laredo on the third Monday in April and the second Monday in November; for the Brownsville division, at Brownsville on the second Monday in May and the first Monday in December; and for the Victoria division, at Victoria on the first Monday in May and the fourth Monday in November. The clerk of the court for the southern district shall maintain an office in charge of himself or a deputy at each of the places now designated for holding court in said district."

Act February 5, 1913, ch. 28, 37 Stat. at L. 663, creates a new division of the western district. "That the counties of Reeves, Ward, Martin, Regan, Winkler, Ector, Gaines,

Andrews, Upton, Midland, Loving, Jeff Davis, and Crane shall constitute a division of the western judicial district of Texas.

"Sec. 2. That terms of the district court of the United States for the said western district of Texas shall be held twice in each year at the city of Pecos, in Reeves county, and that, until otherwise provided by law, the judge of said court shall fix the times at which said court shall be held at Pecos, of which he shall make proclamation and give due notice: *Provided, however,* That suitable rooms and accommodations shall be furnished for the holding of said court and for the use of the officers of said court at Pecos, free of expense to the government of the United States."

Act May 29, 1912, ch. 144, 37 Stat. at L. 120, creates a new division of the southern district. "That the counties of Bee, Live Oak, Aransas, San Patricio, Nueces, Jim Wells, Duval, Brooks, and Willacy shall constitute a division of the southern judicial district of Texas.

"Sec. 2. That terms of the district court of the United States for the said southern district of Texas shall be held twice in each year at the city of Corpus Christi, in Nueces county, and that, until otherwise provided by law, the judge of said court shall fix the times at which said court shall be held at Corpus Christi, of which he shall make publication and give due notice."

§ 142. Utah.

§ *109, Judicial Code,*[m] *36 Stat. at L. 1127, Comp. St. 1911, p. 185, 1912 Supp. F. S. A. v. 1, p. 187.* "The state of Utah shall constitute one judicial district, to be known as the district of Utah. It is divided into two divisions, to be known as the northern and central divisions. The northern division shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Boxelder, Cache, Davis, Morgan, Rich, and Weber. The central division shall include the territory embraced on the date last mentioned in the counties of Beaver, Carbon, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Piute, Salt Lake, San Juan, San Pete, Sevier, Summit, Tooele, Uinta, Utah, Wasatch, Washington, and Wayne. Terms of the district court for the northern division shall be held at

[m] Re-enacting 28 Stat. at L. 110, 4 F. S. A. 57, with amendment thereto, 29 Stat. at L. 620, Foster's Fed. Prac. (4th ed.) pp. 208, 264.

Ogden on the second Mondays in March and September; and for the central division, at Salt Lake City on the second Mondays in April and November. The clerk of the court for said district shall maintain an office in charge of himself or a deputy at each of the places where the court is now required to be held in the district."

§ 143. Vermont.

§ *110, Judicial Code,*[n] *36 Stat. at L. 1127, Comp. St. 1911, p. 185, 1912 Supp. F. S. A. v. 1, p. 187, as amended Feb. 1, 1912, ch. 26, 37 Stat. at L. 58.* "The state of Vermont shall constitute one judicial district, to be known as the district of Vermont. Terms of the district court shall be held at Burlington on the fourth Tuesday in February, at Windsor on the third Tuesday in May, at Rutland on the first Tuesday in October, and at Brattleboro on the third Tuesday in December. In each year one of the stated terms of the district court may, when adjourned, be adjourned to meet at Montpelier, and one at Newport: *Provided, however,* That suitable rooms and accommodations shall be furnished for the holdings of said court and for the use of the officers of said court at Brattleboro, free of expense to the government of the United States, until the public building provided for by act of Congress shall be erected."

144. Virginia.

§ *111, Judicial Code,*[o] *36 Stat. at L. 1127, Comp. St. 1911, p. 186, 1912 Supp. F. S. A. v. 1, pp. 187, 188.* "The state of Virginia is divided into two districts, to be known as the eastern and western districts of Virginia. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Accomac, Alexandria, Amelia, Brunswick, Caroline, Charles City, Chesterfield, Culpepper, Dinwiddie, Elizabeth City, Essex, Fairfax, Fauquier, Gloucester, Goochland, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenberg, Mathews, Mecklenburg, Middlesex, Nansemond, New Kent, Norfolk, Northampton, North-

n Re-enacting § 531, R. S. (see Ref. § 104, supra) Comp. St. 1901, p. 316, 4 F. S. A. 16.

o Re-enacting § 549, R. S., Foster's Fed. Prac. (4th ed.) p. 265, Comp. St. 1901, p. 437, 4 F. S. A. 57.

umberland, Nottoway, Orange, Powhatan, Prince Edward, Prince George, Prince William, Princess Anne, Richmond, Southampton, Spottsylvania, Stafford, Surry, Sussex, Warwick, Westmoreland, and York. Terms of the district court shall be held at Richmond on the first Mondays in April and October; at Norfolk on the first Mondays in May and November; and at Alexandria on the first Mondays in January and July. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alleghany, Albermarle, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Cumberland, Dickenson, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Madison, Montgomery, Nelson, Page, Patrick, Pulaski, Pittsylvania, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe. Terms of the district court shall be held at Lynchburg on the Tuesdays after the second Mondays in March and September; at Danville on the Tuesdays after the second Mondays in April and November; at Abingdon on the Tuesdays after the first Mondays in May and October; at Harrisonburg on the Tuesdays after the first Mondays in June and December; at Charlottesville on the second Monday in January and the first Monday in July; at Roanoke on the third Monday in February and the third Monday in June; and at Big Stone Gap on the fourth Monday in January and the second Monday in August. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Lynchburg, at Danville, at Charlottesville, at Roanoke, at Abingdon, and at Big Stone Gap, which shall be kept open at all times for the transaction of the business of the court."

§ 145. Washington.

§ *112, Judicial Code,*[p] *36 Stat. at L. 1128, Comp. St. 1911, p. 186, 1912 Supp. F. S. A. v. 1, p. 188.* "The state of Washington is divided into two districts, to be known as the eastern and western district of Washington. The eastern district shall include the territory embraced on the first

[p] Re-enacting act of April 5, 1890, ch. 65, 26 Stat. at L. 45. Foster's Fed. Prac. (4th ed.) pp. 208, 265, Comp. St. 1901, p. 438, 4 F. S. A. 57.

day of July, nineteen hundred and ten, in the counties of Spokane, Stevens, Ferry, Okanogan, Chelan, Grant, Douglas, Lincoln, and Adams, with the waters thereof, including all Indian reservations within said counties, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Asotin, Garfield, Whitman, Columbia, Franklin, Walla Walla, Benton, Klickitat, Kittitas, and Yakima, with the waters thereof, including all Indian reservations within said counties, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Spokane on the first Tuesdays in April and September; for the southern division, at Walla Walla on the first Tuesdays in June and December, and at North Yakima, on the first Tuesdays in May and October. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Whatcom, Skagit, Snohomish, King, San Juan, Island, Kitsap, Clallam, and Jefferson, with the waters thereof, including all Indian reservations within said counties, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Pierce, Mason, Thurston, Chehalis, Pacific, Lewis, Wahkiakum, Cowlitz Clarke, and Skamania, with the waters thereof, including all Indian reservations within said counties, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Bellingham on the first Tuesdays in April and October; at Seattle on the first Tuesdays in May and November; and for the southern division, at Tacoma on the first Tuesdays in February and July. The clerks of the courts for the eastern and western districts shall maintain an office in charge of himself or a deputy at each place in their respective districts where terms of court are now required to be held."

§ 146. West Virginia.

§ 113, Judicial Code,[a] *36 Stat. at L. 1129, Comp. St. 1911, p. 187, 1912 Supp. F. S. A. 1, p. 189, as amended March 23, 1912, ch. 63, 37 Stat. at L. 76.* "The state of West Virginia is divided into two districts, to be known

[a] Re-enacting act of Jan. 22, 1901, ch. 105, 31 Stat. at L. 736, Comp. St. 1901, p. 440, 4 F. S. A. 58.

as the northern and southern districts of West Virginia. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Hancock, Brooke, Ohio, Marshall, Tyler, Pleasants, Wood, Wirt, Ritchie, Dodridge, Wetzel, Monongalia, Marion, Harrison, Lewis, Gilmer, Calhoun, Upshur, Barbour, Taylor, Preston, Tucker, Randolph, Pendleton, Hardy, Grant, Mineral, Hampshire, Morgan, Berkeley, and Jefferson, with the waters thereof. Terms of the district court for the northern district shall be held at Martinsburg on the first Tuesday of April and the third Tuesday of September; at Clarksburg on the second Tuesday of April and the first Tuesday of October; at Wheeling on the first Tuesday of May and the third Tuesday of October; at Philippi on the fourth Tuesday of May and the second Tuesday of November; at Parkersburg on the second Tuesday of January and second Tuesday of June: *Provided,* That a place for holding court at Philippi shall be furnished free of cost to the United States by Barbour county until other provision is made therefor by law. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Jackson, Roane, Clay, Braxton, Webster, Nicholas, Pocahontas, Greenbrier, Fayette, Boone, Kanawha, Putnam, Mason, Cabell, Wayne, Lincoln, Logan, Mingo, Raleigh, Wyoming, McDowell, Mercer, Summers, and Monroe, with the waters thereof. Terms of the district court for the southern district shall be held at Charleston on the first Tuesday in June and the third Tuesday in November; at Huntington, on the first Tuesday in April and the first Tuesday after the third Monday in September; at Bluefield on the first Tuesday in May and the third Tuesday in October; at Addison, on the first Tuesday in September; and at Lewisburg, on the second Tuesday in July: *Provided,* That a place for holding court at Addison shall be furnished free of cost to the United States."

§ 147. Wisconsin.

§ *114, Judicial Code,*[r] *36 Stat. at L. 1129, Comp. St. 1911, p. 188, 1912 Supp. F. S. A. v. 1, p. 189.* "The state of Wisconsin is divided into two districts, to be known as the eastern and western districts of Wisconsin. The east-

[r] Re-enacting § 550, R. S., Foster's Fed. Prac. (4th ed.) p. 267, Comp. St. 1901, p. 443, 4 F. S. A. 59.

ern districts shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago. Terms of the district court for said district shall be held at Milwaukee on the first Mondays in January and October; at Oshkosh on the second Tuesday in June; and at Green Bay on the first Tuesday in April. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Dunn, Douglas, Eau Claire, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, Rusk, Saint Croix, Sauk, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, and Wood. Terms of the district court for said district shall be held at Madison on the first Tuesday in December; at Eau Claire on the first Tuesday in June; at La Crosse on the third Tuesday in September; and at Superior on the fourth Tuesday in January and the second Tuesday in July. The district court for each of said districts shall be open at all times for the purpose of hearing and deciding causes of admiralty and maritime jurisdiction, so far as the same can be done without a jury. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Madison, at La Crosse, and at Superior, which shall be kept open at all times for the transaction of the business of the court. The marshal for the western district shall appoint a deputy marshal who shall reside and keep his office at Superior. All writs and other process, except criminal warrants, issued at Superior, may be made returnable at Superior; and the clerk at that place shall keep in his office the original records of all actions, prosecutions, and special proceedings so commenced and pending therein. Criminal warrants may be returned at any place within the district where court is held. Whenever warrants issued at Superior shall be returned at any other place, the clerk of the court wherein the warrant is returned, shall certify the same, under the seal of the court, together with the plea and other proceedings had thereon,

and the determination of the court upon such plea or proceedings, with all papers and orders filed in reference thereto, to the clerk of the court at Superior; and the clerk at Superior shall enter upon his records a minute of the proceedings had upon the return of said warrant, certified as aforesaid. All causes and proceedings instituted in the court at Superior, shall be tried therein, unless by consent of the parties, or upon the order of the court, they are transferred to another place for trial."

§ 148. Wyoming.

§ *115, Judicial Code,*[a] *36 Stat. at L. 1130, Comp. St. 1911, p. 189, 1912 Supp. F. S. A. v. 1, p. 190.* "The state of Wyoming and the Yellowstone National Park shall constitute one judicial district, to be known as the district of Wyoming. Terms of the district court for said district shall be held at Cheyenne on the second Mondays in May and November; at Evanston on the second Tuesday in July; and at Lander on the first Monday in October; and the said court shall hold one session annually at Sheridan, and in said national park, on such dates as the court may order. The marshal and clerk of the said court shall each, respectively, appoint at least one deputy to reside at Evanston, and one to reside at Lander, unless he himself shall reside there, and shall also maintain an office at each of those places: *Provided,* That until a public building is provided at Lander, suitable accommodations for holding court in said town shall be furnished the government at an expense not to exceed three hundred dollars annually. The marshal of the United States for the said district may appoint one or more deputy marshals for the Yellowstone National Park, who shall reside in said park."

[a] Re-enacting 26 Stat. at L. 225, Foster's Fed. Prac. (4th ed.) p. 268, 4 F. S. A. 59.

CHAPTER 5.

VENUE OF ACTIONS IN THE DISTRICT COURT—TERRITORIAL JURISDICTION.

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§ 160. In General. In considering the subject of venue, the Federal district or division corresponds to the county in state systems.

The distinctions exist in the Federal as in the state practice respecting suits of local and suits transitory in their nature. Suits of a local nature must be brought in the district in which lies some part of the land or other property of a fixed character, the subject of the suit.

Suits not of a local nature should be brought in the district whereof the defendant is an inhabitant,[1] except where the jurisdiction is founded only on the fact that the action is between citizens of different states, in which case the suit shall be brought only in the district of residence of either the plaintiff or the defendant.[2]

Where there is more than one district in a state and several defendants in a suit not of a local nature, it may be brought where any of the defendants reside and process issued to the other defendants residing in other districts in the state.[3]

In like manner, where there is more than one division in a district and several defendants in a suit not of local nature, the suit may be brought in the division of the residence of any of the defendants and process issued to the other defendants in other divisions and districts in the state.[4]

Suits of local nature should be brought where the land lies, and if a defendant resides in a different district in the same state, original process may be served on him therein.[5]

If the suit is of local nature and the subject-matter lies partly in one district and partly in another within the same state, suit may be brought in either district.[6]

In suits to enforce any legal or equitable lien upon, or claim to, or to remove any encumbrance or lien or cloud upon the title to, real or personal property within the district where the suit is brought, service may be made on nonresident or absent defendants by publication.[7]

In a suit in which a receiver is appointed, where the land or other property of a fixed character, the subject of the suit, lies within different states in the same circuit, the receiver upon proper proceedings may control same, although outside the district of his appointment.[8]

There are special provisions relating to crimes and offenses;[9] penalties and forfeitures;[10] taxes and internal revenue;[11] seizures,[12] patent cases,[13] suits against the Comptroller of Currency.[14]

1 § 161, infra. 2 Ibid. 3 § 162, infra. 4 § 163, infra.
5 § 164, infra. 6 § 165, infra. 7 § 166, infra. 8 § 167, infra.
9 § 174, infra. 10 § 175, infra. 11 § 176, infra. 12 §§ 177, 178, infra
13 § 171, infra. 14 § 172, infra.

§ 161. Civil Suits—In General.

§ 51, Judicial Code,[a] *36 Stat. at L. 1101, Comp. St. 1911, p. 150, 1912 Supp. F. S. A. v. 1, p. 153.* "Except as provided in the five succeeding sections, no person shall be arrested in one district for trial in another, in any civil action before a district court; and, except as provided in the six succeeding sections, no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of the residence of either the plaintiff or the defendant."

This section is substantially what was already the law, except that circuit courts have been abolished. Rose's Code treats the subject in §§ 401–401a–b–c–cc–ccc–d–f.

§ 162. Nonlocal Suits in State of More than One District.

§ 52, Judicial Code,[b] *36 Stat. at L. 1101, Comp. St. 1911, p. 150, 1912 Supp. F. S. A. v. 1, pp.153–4.* "When a state contains more than one district, every suit not of a local nature, in the district court thereof, against a single defendant, inhabitant of such state, must be brought in the district where he resides; but if there are two or more defendants, residing in different districts of the state, it may be brought in either district, and a duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant resides. The clerk issuing the duplicate writ shall indorse thereon that it is a true copy of a writ sued out of the court of the proper district; and such original and duplicate writs, when executed and returned into the office from which they issue, shall constitute and be proceeded on as one suit; and upon any judgment or decree rendered therein, execution may be issued, directed to the marshal of any district in the same state."

[a] Embracing § 739, R. S., 4 F. S. A. 554, as modified in 25 Stat. at L. 434, Comp. St. 1901, p. 508, 4 F. S. A. 265, which are repealed by § 297, Judicial Code. Macon Grocery Co. v. Atlantic Coast Line R. R. Co. 215 U. S. 501, 54 L. ed. 300, 30 Sup. Ct. Rep. 184.

[b] Re-enacting § 740. R. S., Rose's Code, §§ 402, 854, Foster's Fed. Prac. (4th ed.) p. 206, Comp. St. 1901, p. 587, 4 F. S. A. 554. which section is repealed by § 297, Judicial Code. In general, Matter of Albert N. Moore, An Infant, 209 U. S. 490, 52 L. ed. 904, 28 Sup. Ct. Rep. 585, 14 Ann. Cas. 1164.

§ 163. Nonlocal Suits Where District Contains More than One Division.

§ 53, Judicial Code,[c] *36 Stat. at L. 1101, Comp. St. 1911, p. 150, 1912 Supp. F. S. A. v. 1, p. 154.* "When a district contains more than one division, every suit not of a local nature against a single defendant must be brought in the division where he resides; but if there are two or more defendants residing in different divisions of the district it may be brought in either division. All mesne and final process subject to the provisions of this section may be served and executed in any or all of the divisions of the district, or if the state contains more than one district, then in any of such districts, as provided in the preceding section. All prosecutions for crimes or offenses shall be had within the division of such districts where the same were committed, unless the court, or the judge thereof, upon the application of the defendant, shall order the cause to be transferred for prosecution to another division of the district. When a transfer is ordered by the court or judge, all the papers in the case, or certified copies thereof, shall be transmitted by the clerk, under the seal of the court, to the division to which the cause is so ordered transferred; and thereupon the cause shall be proceeded with in said division in the same manner as if the offense had been committed therein. In all cases of the removal of suits from the courts of a state to the district court of the United States such removal shall be to the United States district court in the division in which the county is situated from which the removal is made; and the time within which the removal shall be perfected, in so far as it refers to or is regulated by the terms of United States courts, shall be deemed to refer to the terms of the United States district court in such division."

This section supersedes a great many acts creating divisions of districts mentioned in Rose's Code, §§ 405, 406–412.

§ 164. Local Suits with Defendant in Another District Same State.

§ 54, Judicial Code,[d] *36 Stat. at L. 1102, Comp. St. 1911,*

[c] Superseding a number of particular sections, 31 Stat. at L. 220, 21 Stat. at L. 63, 31 Stat. at L. 818, 34 Stat. at L. 207, 1909, Supp. F. S. A. 301.

[d] Re-enacting § 741, R. S., Rose's Code, § 855, Foster's Fed. Prac. (4th

p. 151, 1912 Supp. F. S. A. v. 1, p. 155. "Any suit of a local nature, where the defendant resides in a different district, in the same state, from that in which the suit is brought, the plaintiff may have original and final process against him, directed to the marshal of the district in which he resides."

§ 165. Local Suits with Subject-Matter Lying Partly in One District and Partly in Another.

§ *55, Judicial Code,*[e] *36 Stat. at L. 1102, Comp. St. 1911, p. 151, 1912 Supp. F. S. A. v. 1, p. 155.* "Any suit of a local nature, at law or in equity, where the land or other subject-matter of a fixed character lies partly in one district and partly in another, within the same state, may be brought in the district court of either district; and the court in which it is brought shall have jurisdiction to hear and decide it, and to cause mesne or final process to be issued and executed, as fully as if the said subject-matter were wholly within the district for which such court is constituted."

§ 166. Liens—Clouds on Title—Absent Defendant.

§ *57, Judicial Code,*[f] *36 Stat. at L. 1102, Comp. St. 1911, p. 152, 1912 Supp. F. S. A. v. 1, pp. 155–6.* "When in any suit commenced in any district court of the United States to enforce any legal or equitable lien upon or claim to, or to remove any encumbrance or lien or cloud upon, the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, whenever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such per-

ed.) pp. 206, 437, Comp. St. 1901, p. 588, 4 F. S. A. 555, which section is repealed by § 297, Judicial Code. In general, Greeley v. Lowe, 155 U. S. 58, 39 L. ed. 69, 15 Sup. Ct. Rep. 24.

[e] Re-enacting § 742, R. S., Rose's Code, § 403, Foster's Fed. Prac. (4th ed.) pp. 206, 437, Comp. St. 1901, p. 588, 4 F. S. A. 555, which section is repealed by § 297, Judicial Code. In general, Greeley v. Lowe, supra.

[f] Re-enacting 18 Stat. at L. 472, Foster's Fed. Prac. (4th ed.) pp. 449, 958, 1016, 1022, 1457, 1614, Comp. St. 1901, p. 513, 4 F. S. A. 380, which statute is

sonal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks. In case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district; and when a part of the said real or personal property against which such proceedings shall be taken shall be within another district, but within the same state, such suit may be brought in either district in said state: *Provided, however,* That any defendant or defendants not actually personally notified as above provided may, at any time within one year after final judgment in any suit mentioned in this section, enter his appearance in said suit in said district court, and thereupon the said court shall make an order setting aside the judgment therein and permitting said defendant or defendants to plead therein on payment by him or them of such costs as the court shall deem just; and thereupon said suit shall be proceeded with to final judgment according to law."

§ 167. Receiver's Jurisdiction over Real Property Outside District in Circuit.

§ *56, Judicial Code,*[‡] *36 Stat. at L. 1102, Comp. St. 1911, p. 151, 1912 Supp. F. S. A. v. 1, p. 155.* "Where in any suit in which a receiver shall be appointed the land or other property of a fixed character, the subject of the suit, lies within different states in the same judicial circuit, the receiver so appointed shall, upon giving bond as required by the court, immediately be vested with full jurisdiction and

repealed by § 297, Judicial Code. In general, Ladew v. Tenn. Copper Co. 218 U. S. 357, 54 L. ed. 1069, 31 Sup. Ct. Rep. 81; Chase v. Wetzlar Exch. 225 U. S. 79, 56 L. ed. 990, 32 Sup. Ct. Rep. 659.

‡ This is new legislation.

control over all the property, the subject of the suit, lying or being within such circuit; subject, however, to the disapproval of such order, within thirty days thereafter, by the circuit court of appeals for such circuit, or by a circuit judge thereof, after reasonable notice to adverse parties and an opportunity to be heard upon the motion for such disapproval; and subject, also, to the filing and entering in the district court for each district of the circuit in which any portion of the property may lie or be, within ten days thereafter, of a duly certified copy of the bill and of the order of appointment. The disapproval of such appointment within such thirty days, or the failure to file such certified copy of the bill and order of appointment within ten days, as herein required, shall devest such receiver of jurisdiction over all such property except that portion thereof lying or being within the state in which the suit is brought. In any case coming within the provisions of this section, in which a receiver shall be appointed, process may issue and be executed within any district of the circuit in the same manner and to the same extent as if the property were wholly within the same district; but orders affecting such property shall be entered of record in each district in which the property affected may lie or be."

§ 168. Transfer to Another Division on Stipulation.

§ 58, Judicial Code,[h] *36 Stat. at L. 1103, Comp. St. 1911, 152, 1912 Supp. F. S. A. v. 1, p. 156.* "Any civil cause, at law or in equity, may, on written stipulation of the parties or of their attorneys of record signed and filed with the papers in the case, in vacation or in term, and on the written order of the judge signed and filed in the case in vacation or on the order of the court duly entered of record in term, be transferred to the court of any other division of the same district, without regard to the residence of the defendants, for trial. When a cause shall be ordered to be transferred to a court in any other division, it shall be the duty of the clerk of the court from which the transfer is made to carefully transmit to the clerk of the court to which the transfer is made the entire file of papers in the cause and all documents and deposits in his court pertaining thereto, together

[h] Drawn from 24 Stat. at L. 425, 4 F. S. A. 647; 34 Stat. at L. 206, 1909 Supp. F. S. A. 301.

with a certified transcript of the record of all orders, interlocutory decrees, or other entries in the cause; and he shall certify, under the seal of the court, that the papers sent are all which are on file in said court belonging to the cause; for the performance of which duties said clerk so transmitting and certifying shall receive the same fees as are now allowed by law for similar services, to be taxed in the bill of costs, and regularly collected with the other costs in the cause; and such transcript, when so certified and received, shall henceforth constitute a part of the record of the cause in the court to which the transfer shall be made. The clerk receiving such transcript and original papers shall file the same and the case shall then proceed to final disposition as other cases of a like nature."

§ 169. On Creation of New District or Division or Transfer of Territory.

§ *59, Judicial Code,*[1] *36 Stat. at L. 1103, Comp. St. 1911, p. 153, 1912 Supp. F. S. A. v. 1, p. 157.* "Whenever any new district or division has been or shall be established, or any county or territory has been or shall be transferred from one district or division to another district or division, prosecutions for crimes and offenses committed within such district, division, county, or territory prior to such transfer, shall be commenced and proceeded with the same as if such new district or division had not been created, or such county or territory had not been transferred, unless the court, upon the application of the defendant, shall order the cause to be removed to the new district or division for trial. Civil actions pending at the time of the creation of any such district or division, or the transfer of any such county or territory, and arising within the district or division so created or the county or territory so transferred, shall be tried in the district or division as it existed at the time of the institution of the action, or in the district or division so created, or to which the county or territory is or shall be so transferred, as may be agreed upon by the parties, or as the court shall direct. The transfer of such prosecutions and actions shall be made in the manner provided in the section last preceeding."

[1] Drawn from a number of acts creating new districts or divisions.

§ 170. Same—Preservation and Enforcement of Liens.

§ 60, Judicial Code,[j] *36 Stat. at L. 1103, Comp. St. 1911, p. 153, 1912 Supp. F. S. A. v. 1, p. 157.* "The creation of a new district or division, or the transfer of any county or territory from one district or division to another district or division, shall not affect or devest any lien theretofore acquired in the circuit or district court by virtue of a decree, judgment, execution, attachment, seizure, or otherwise, upon property situated or being within the district or division so created, or the county or territory so transferred. To enforce any such lien, the clerk of the court in which the same is acquired, upon the request and at the cost of the party desiring the same, shall make a true and certified copy of the record thereof, which, when so made and certified, and filed in the proper court of the district or division in which such property is situated or shall be, after such transfer, shall constitute the record of such lien in such court, and shall be evidence in all courts and places equally with the original thereof; and thereafter like proceedings shall be had thereon, and with the same effect, as though the cause or proceeding had been originally instituted in such court. The provisions of this section shall apply not only in all cases where a district or division is created, or a county or any territory is transferred by this or any future act, but also in all cases where a district or division has been created, or a county or any territory has been transferred by any law heretofore enacted."

§ 171. Infringement of Letters Patent.

§ 48, Judicial Code,[k] *36 Stat. at L. 1100, Comp. St. 1911, p. 149, 1912 Supp. F. S. A. v. 1, p. 153.* "In suits brought for the infringement of letters patent the district courts of the United States shall have jurisdiction, in law or in equity, in the district of which the defendant is an inhabitant, or in any district in which the defendant, whether a person, partnership, or corporation, shall have committed acts of infringement and have a regular and established place of busi-

[j] Embracing 24 Stat. at L. 309, Foster's Fed. Prac. (4th ed.) p. 234, 4 F. S. A. 20, and 31 Stat. at L. 881. 4 F. S. A. 654.

[k] Re-enacting 29 Stat. at L. 695, Foster's Fed. Prac. (4th ed.) pp. 200, 210, 710, Comp. St. 1901, p. 588. 5 F. S. A. 566, which statute is repealed by § 297, Judicial Code. For jurisdiction, see Consolidated Rubber Tire Co. et al. v. Republic Rubber Co. 195 Fed. 768; note to Bailey v. Mosher, 63 Fed. 488, 11 C. C. A. 313; Smith v. Farbenfabriken of Elberfeld Co. 203 Fed. 476.

ness. If such suit is brought in a district of which the defendant is not an inhabitant, but in which such defendant has a regular and established place of business, service of process, summons, or subpœna upon the defendant may be made by service upon the agent or agents engaged in conducting such business in the district in which suit is brought."

§ 172. To Enjoin Comptroller of Currency.

§ 49, *Judicial Code*,[l] *36 Stat. at L. 1100, Comp. St. 1911, p. 149, 1912 Supp. F. S. A. v. 1, p. 153.* "All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located."

§ 173. Part of Several Defendants Not Found.

§ 50, *Judicial Code*,[m] *36 Stat. at L. 1101, Comp. St. 1911, p. 149, 1912 Supp. F. S. A. v. 1, p. 153.* "When there are several defendants in any suit at law or in equity, and one or more of them are neither inhabitants of nor found within the district in which the suit is brought, and do not voluntarily appear, the court may entertain jurisdiction, and proceed to the trial and adjudication of the suit between the parties who are properly before it; but the judgment or decree rendered therein shall not conclude or prejudice other parties not regularly served with process nor voluntarily appearing to answer; and nonjoinder of parties who are not inhabitants of nor found within the district, as aforesaid, shall not constitute matter of abatement or objection to the suit."

§ 174. Crimes and Offenses.

Capital offenses.

§ 40, *Judicial Code*,[n] *36 Stat. at L. 1100, Comp. St. 1911, p. 148, 1912 Supp. F. S. A. v. 1, p. 151.* "The trial of of-

[l] Re-enacting § 736, R. S. U. S., Comp. St. 1901, p. 586, 5 F. S. A. 197, which section is repealed by § 297, Judicial Code.

[m] Re-enacting § 737, R. S., Rose's Code, § 817, Foster's Fed. Prac. (4th ed.) p. 326, Comp. St. 1901, p. 587, 4 F. S. A. 552, which section is repealed by § 297, Judicial Code. In general, Waterman v. Canal-Louisiana Bank Co. 215 U. S. 33, 54 L. ed. 80, 30 Sup. Ct. Rep. 10, and other cases cited in notes 4 F. S. A. pp. 552–4.

[n] Re-enacting § 729, R. S., Rose's Code, § 427, Foster's Fed. Prac. (4th ed.) pp. 210, 1430, Comp. St. 1901, p. 585, 2 F. S. A. 354, which section is re-

fenses punishable with death shall be had in the county where the offense was committed, where that can be done without great inconvenience."

Committed outside state jurisdiction.

§ *41, Judicial Code,*[o] *36 Stat. at L. 1100, Comp. St. 1911, p. 148, 1912 Supp. F. S. A. v. 1, p. 151.* "The trial of all offenses committed upon the high seas, or elsewhere out of the jurisdiction of any particular state or district, shall be in the district where the offender is found, or into which he is first brought."

Committed in two districts.

§ *42, Judicial Code,*[p] *36 Stat. at L. 1100, Comp. St. 1911, p. 148, 1912 Supp. F. S. A. v. 1, p. 151.* "When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein."

Sale of arms and intoxicants in Pacific islands deemed on high seas.

§ *309, Penal Code, Comp. St. 1911, p. 1680, 1909 Supp. F. S. A. p. 490.* "All offenses against the provisions of the section last preceding, committed on any of said islands or on the waters, rocks, or keys adjacent thereto, shall be deemed committed on the high seas on board a merchant ship or vessel belonging to the United States, and the courts of the United States shall have jurisdiction accordingly."

Vessel defined.

§ *310, Penal Code, Comp. St. 1911, p. 1680, 1909 Supp. F. S. A. p. 490.* "The words, 'vessel of the United States,'

pealed by § 297, Judicial Code. In general, Hendrix v. United States, 219 U. S. 79, 55 L. ed. 102, 31 Sup. Ct. Rep. 193.

o Re-enacting § 730, R. S., Rose's Code, § 428, Foster's Fed. Prac. (4th ed.) p. 1428, Comp. St. 1901, p. 585, 2 F. S. A. 345, which section is repealed by § 297, Judicial Code.

As to definition of "high seas," and jurisdiction on the high seas, see United States v. Rodgers, 150 U. S. 249, 37 L. ed. 1071, 14 Sup. Ct. Rep. 109.

p Re-enacting § 731, R. S., Rose's Code, § 430, Comp. St. 1901, p. 585,

wherever they occur in this chapter, shall be construed to mean a vessel belonging in whole or in part to the United States, or any citizen thereof, or any corporation created by or under the laws of the United States, or of any state, territory, or district thereof."

§ 175. Penalties and Forfeitures.

Pecuniary penalties and forfeitures.

§ *43, Judicial Code,*[q] *36 Stat. at L. 1100, Comp. St. 1911, p. 148, 1912 Supp. F. S. A. v. 1, p. 152.* "All pecuniary penalties and forfeitures may be sued for and recovered either in the district where they accrue or in the district where the offender is found."

Seizures made on high seas for forfeitures.

§ *45, Judicial Code,*[r] *36 Stat. at L. 1100, Comp. St. 1911, p. 148, 1912 Supp. F. S. A. v. 1, p. 152.* "Proceedings on seizures made on the high seas for forfeiture under any law of the United States, may be prosecuted in any district into which the property so seized is brought and proceedings instituted. Proceedings on such seizures made within any district shall be prosecuted in the district where the seizure is made, except in cases where it is otherwise provided."

§ 176. Taxes and Internal Revenue.

§ *44, Judicial Code,*[s] *36 Stat. at L. 1100, Comp. St. 1911, p. 148, 1912 Supp. F. S. A. v. 1, p. 152.* "Taxes accruing under any law providing internal revenue may be sued for and recovered either in the district where the liability for such tax occurs or in the district where the delinquent resides."

2 F. S. A. 347, which section is repealed by § 297, Judicial Code. In general, Hyde & Schneider v. United States, 225 U. S. 347, 56 L. ed. 1114, 32 Sup. Ct. Rep. 793.

[q] Re-enacting § 732, R. S., Rose's Code, § 421, Comp. St. 1901, p. 585, 3 F. S. A. 95, which section is repealed by § 297, Judicial Code. In general, Lee v. United States, 150 U. S. 476, 37 L. ed. 1150, 14 Sup. Ct. Rep. 163.

[r] Re-enacting § 734, R. S., Rose's Code § 422, Comp. St. 1901, p. 586, 3 F. S. A. 95, which section is repealed by § 297, Judicial Code.

[s] Re-enacting § 733, R. S., Rose's Code, § 420, Comp. St. 1901, p. 586, 3 F. S. A. 595, which section is repealed by § 297, Judicial Code. In general, Taylor v. Holmes and others, 14 Fed. 498.

§ 177. Condemnation Insurrectionary Property.

§ *46, Judicial Code,*[t] *36 Stat. at L. 1100, Comp. St. 1911, p. 148, 1912 Supp. F. S. A. v. 1, p. 152.* "Proceedings for the condemnation of any property captured, whether on the high seas or elsewhere out of the limits of any judicial district, or within any district, on account of its being purchased or acquired, sold or given, with intent to use or employ the same, or to suffer it to be used or employed, in aiding, abetting, or promoting any insurrection against the government of the United States, or knowingly so used or employed by the owner thereof, or with his consent, may be prosecuted in any district where the same may be seized, or into which it may be taken and proceedings first instituted."

§ 178. Seizures for Forfeiture—Embargo or Insurrection.

§ *47, Judicial Code,*[u] *36 Stat. at L. 1100, Comp. St. 1911, p. 149, 1912 Supp. F. S. A. v. 1, p. 152.* "Proceedings on seizures for forfeiture of any vessel or cargo entering any port of entry which has been closed by the President in pursuance of law, or of goods and chattels coming from a state or section declared by proclamation of the President to be in insurrection into other parts of the United States, or of any vessel or vehicle conveying such property, or conveying persons to or from such state or section, or of any vessel belonging, in whole or in part, to any inhabitant of such state or section, may be prosecuted in any district into which the property so seized may be taken and proceedings instituted; and the district court thereof shall have as full jurisdiction over such proceedings as if the seizure was made in the district."

§ 179. Prosecutions for Failure to File Tariffs, Giving Rebates, etc.

§ *1, Act Feb. 19, 1903, ch. 708, 32 Stat. at L. 847, Comp. St. 1911, p. 1310, 10 F. S. A. 171.* "Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another

[t] Re-enacting § 735, R. S., Comp. St. 1901, p. 586, 6 F. S. A. 70, which section is repealed by § 297, Judicial Code.

[u] Re-enacting § 564, R. S., Rose's Code, § 423, Comp. St. 1901, p. 460, 6 F. S. A. 236, which section is repealed by § 297, Judicial Code.

it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein."

§ 180. Venue of Suits Affecting Orders of Interstate Commerce Commission.

Pt. Act October 22, 1913, ch. 32, 38 Stat. at L. 219. "The venue of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission, shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation, or is not made upon the petition of any party, the venue shall be in the district where the matter complained of in the petition before the Commission arises, and except that where the order does not relate to either transportation or to a matter so complained of before the Commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment, the term 'destination' shall be construed as meaning the final destination of such shipment."

For payment of money.

Pt. § 16, Interstate Commerce Act 1912, Supp. F. S. A. v. 1, p. 123. Suits to enforce payment of money may be brought in the district court "for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, or in any state court of general jurisdiction having jurisdiction of the parties."

§ 181. Issue of Venue—How Raised. Objections as to the venue of actions must be raised at the earliest possible moment, as this is a personal privilege, and may be waived by the defendant's failure to seasonably object.

In cases of removal the question of venue may be important in determining whether or not the suit was one of which the district court had original jurisdiction. But the defect will be waived if not put in issue by the plaintiff in his motion to remand.

The filing of petition and bond for removal is a waiver by the defendant. The issue should be raised in the motion to remand.

If a suit is originally brought in the Federal court and it is not brought in the district of which the defendant is an inhabitant (except in the special cases heretofore indicated), or if, in case of diversity of citizenship, the suit is not brought in the residence district of the plaintiff or defendant, the issue as to venue would be raised in a suit in equity under Rule 29 by motion to dismiss, if apparent on the face of the record, or in the answer and separately heard, if the defect is not apparent on the face of the record.

In a suit at law the issue would be raised in that form of pleading used to raise jurisdictional questions in the state court of record of the state wherein the district is situated. Generally the pleading would be a demurrer for defects apparent on the face of the record, and a plea or answer where not apparent on the face of the record.

If a motion to dismiss is filed, the following form is suggested:

"IN THE DISTRICT COURT OF THE UNITED STATES FOR THE .....
DISTRICT OF ....., ... DIVISION.

John Doe,
Plaintiff,
—vs.—
Richard Roe,
Defendant.
} MOTION TO DISMISS

Now comes the defendant in the above-entitled action and moves the court to dismiss same on the ground that, as appears on the face of the bill, at the commencement of this action he was not, and is not now, an inhabitant of nor residing in the ..... district of ....., where this suit is brought, but that at the commencement of this action and now, he was and is an inhabitant of and resides in ..... County which is in the ..... District of the State of ..... and not the district where this suit is brought.

.....,
Solicitor."

If the objection be that he is not sued in the proper division of the district, the word "division" may be substituted for district in the above form.

In case of a corporation, the allegation may be:

"That it is not an inhabitant of or residing in the ..... County of ....., District of ....., but is an inhabitant of and residing in ..... County in the ..... District of ....., where its principal office or headquarters are situated, its corporate meetings held and its corporate business transacted."

"IN THE DISTRICT COURT OF THE UNITED STATES IN THE ..... DISTRICT OF ....., ... DIVISION.

John Doe,
Plaintiff,
—vs—
Richard Roe,
Defendant.
} ANSWER

Defendant answering plaintiff's complaint, alleges:

As a separate defense, denies that plaintiff at the commencement of this suit was or is now, an inhabitant of or resident of the ..... Division of ..... where this suit is brought, but alleges that at the commencement of the suit he was and now is an inhabitant of ..... and resides in ..... County, which is in the ..... District of the State of ....., and, therefore, this action is not properly within the jurisdiction of this court. . . . ."

CHAPTER 6.

DISTRICT COURT—JURISDICTION, ORIGINAL AND APPELLATE.

Sec.
190. In General.
191. District Court—Jurisdiction Exclusive of State Courts.
192. Exclusive Jurisdiction.
193. District Court—Jurisdiction Concurrent with That of State Courts.
194. Original Jurisdiction.
195. Jurisdiction by Assignment.
196. Agriculture.
197. Alien Enemies.
198. Same—Duties of Marshal.
199. Customs Duties.
200. Rivers, Harbors, and Canals—Actions to Remove Obstructions.
201. White Slave Traffic.
202. Appellate Jurisdiction Chinese Exclusion Laws.
203. Appellate Jurisdiction Yellowstone National Park.
204. Jurisdiction of Crimes on Indian Reservations South Dakota.
205. Power to Enforce Foreign Consular Awards.
206. Powers of Foreign Consuls over Disputes between Seamen.
207. Arrest of Seamen on Application of Consul.
208. Commitment and Discharge.
209. Jurisdiction in Cases Transferred from Territorial Courts.
210. Jurisdiction under Reclamation Act.
211. Jurisdiction under Income Tax Law.
212. Jurisdiction in Arbitration of Disputes between Common Carriers and Employees.

§ 190. In General. The original jurisdiction of the Federal district court is set out in § 24, Judicial Code,[1] part of which is made exclusive by § 256, Judicial Code,[2] and part by other provisions,[3] the remainder being concurrent with that of state courts of record in the various states.[4]

Under § 24, the jurisdiction of the district courts is limited to cases involving a Federal question [5] or diverse citizenship,[6] also

[1] § 194, infra. [2] § 192, infra. [3] § 191, infra. [4] § 193, infra.
[5] Ch. 7, post. [6] Ch. 8, post.

with respect to the amount in controversy [7] and the denial of the right of certain assignees to sue unless their assignors could have brought the suits in the Federal courts.[8]

Considerable volume of business comes into the Federal district courts through its jurisdiction on removal of cases from the state courts. This jurisdiction on removal under §§ 28 et seq., Judicial Code, is limited to those cases of concurrent jurisdiction of which the district court has *original jurisdiction.* This subject is treated in a separate chapter, chapter 10, entitled, "Removal of Causes —Jurisdiction and Procedure."

Under special provisions of the Federal statutes giving jurisdiction to the United States courts, several include the United States district court.

The United States district court has jurisdiction of various matters under the titles, "Agriculture," [9] "Alien Enemies," [10] "Customs Duties," [11] "Rivers, Harbors, and Canals," [12] and "White Slave Traffic," [13] "Income Tax Law," [13a] "Arbitration Disputes Common Carriers and Employees," [13b] "Reclamation Act," [13c] and others.

The appellate jurisdiction of the district court is given by the Chinese exclusion laws, § 25, Judicial Code,[14] over Yellowstone National Park by § 26, Judicial Code; [15] over crimes in Indian Reservation in South Dakota by § 27, Judicial Code.[16]

The district courts are given power to enforce awards of foreign consuls by § 271, Judicial Code.[17]

In this connection we set out the powers of foreign consuls under §§ 4079–4080–4081, R. S.[18]

By § 64, Judicial Code, the district court is given jurisdiction of cases transferred from territorial courts.[19]

The grounds of Federal jurisdiction are treated separately as above suggested in chapters 7 and 8, entitled respectively, "Federal Question—Ground of Jurisdiction,"—"Diverse Citizenship—Ground of Jurisdiction."

[7] Ch. 9, post. [8] § 195, infra. [9] § 196, infra. [10] §§ 197–8, infra.
[11] § 199, infra. [12] § 200, infra. [13] § 201, infra. [13a] § 211, infra.
[13b] § 212, infra. [13c] § 210, infra. [14] § 202, infra. [15] § 203, infra.
[16] § 204, infra. [17] § 205, infra. [18] §§ 206–207–208, infra.
[19] § 210, infra.

Chapter 9 treats of "Amount in Controversy as Affecting Jurisdiction." Chapter 5 treats of "Venue of Actions in the District Court—Territorial Jurisdiction," while chapter 4 gives the boundaries of the judicial districts and divisions, the times and places of holding court.

§ 191. District Court—Jurisdiction Exclusive of State Courts. The district court's *exclusive jurisdiction* extends over those matters peculiarly within the scope of national control, such as cases against consuls and vice consuls,[20] admiralty and maritime causes,[21] seizures and prizes,[22] patents and copyrights,[23] penalties and forfeitures under the Federal laws,[24] crimes and offenses of Federal cognizance,[25] and also cases where Congress has legislated to the exclusion of state control, as under the bankruptcy laws.[26] So, also, though not mentioned in § 256, Judicial Code, it would have jurisdiction, exclusive of the state courts, of suits against the United States, concurrently with the court of claims.[27] It also has jurisdiction exclusive of the state courts, of suits for the unlawful inclosure of public lands,[28] and against trusts, monopolies, and unlawful combinations.[29]

The amount involved is not material in these cases of exclusive jurisdiction.[30]

§ 24, Judicial Code, is quoted § 194, infra, and § 256 is quoted § 192, infra. See also chapter 12, entitled, "Summaries—Original Jurisdiction, Removal, Amount, Venue—For the Several Matters of District Court Cognizance."

§ 192. Exclusive Jurisdiction.

§ 256, Judicial Code,[n] 36 Stat. at L. 1160, Comp. St. 1911, pp. 233, 234, 1912 Supp. F. S. A. v. 1, pp. 238–9.

20 Subd. 18th, § 24, Judicial Code, Subd. 8th, § 256, Judicial Code.
21 Subd. 3d, § 24, Judicial Code, Subd. 3d, § 256, Judicial Code.
22 Subd. 3d, § 24, Judicial Code, Subd. 4th, § 256, Judicial Code.
23 Subd. 7th, § 24, Judicial Code, Subd. 5th, § 256, Judicial Code.
24 Subd. 9th, § 24, Judicial Code, Subd. 2d, § 256, Judicial Code.
25 Subd. 2d, § 24, Judicial Code, Subd. 1st, § 256, Judicial Code.
26 Subd. 19th, § 24, Judicial Code, Subd. 6th, § 256, Judicial Code.
27 Subd. 20th, § 24, Judicial Code, § 145, Judicial Code.
28 Subd. 21st, § 24, Judicial Code.
29 Subd. 23d, § 24, Judicial Code, Loewe v. Lawler, 130 Fed. 633.
30 Last part subd. 1, § 24, Judicial Code.

n The general clause is from § 711, R. S., Rose's Code, § 15, Foster's Fed. Prac. (4th ed.) p. 2068, Comp. St. 1901, p. 577, 4 F. S. A. 493.

"The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several states:

"First. Of all crimes and offenses cognizable under the authority of the United States.

"Second. Of all suits for penalties and forfeitures incurred under the laws of the United States.

"Third. Of all civil causes of admiralty and maritime jurisdiction; saving to suitors, in all cases, the right of a common-law remedy, where the common law is competent to give it.

"Fourth. Of all seizures under the laws of the United States, on land or on waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize.

"Fifth. Of all cases arising under the patent-right, or copyright laws of the United States.

"Sixth. Of all matters and proceedings in bankruptcy.

"Seventh. Of all controversies of a civil nature, where a state is a party, except between a state and its citizens, or between a state and citizens of other states, or aliens.

"Eighth. Of all suits and proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, or against consuls or vice consuls."

§ 193. District Court—Jurisdiction Concurrent with That of State Courts. The Federal district courts also have an exten-

Paragraph one re-enacts paragraph one of § 711, R. S., Comp. St. 1901, p. 577, 4 F. S. A. 493.

Paragraph two re-enacts paragraph two of § 711, R. S., Comp. St. 1901, p. 577, 4 F. S. A. 493.

Paragraph three re-enacts paragraph three of § 711, R. S., Comp. St. 1901, p. 577, 4 F. S. A. 493.

Paragraph four re-enacts paragraph four of § 711, R. S., Comp. St. 1901, p. 577, 4 F. S. A. 494; part of paragraph eight of § 563, R. S. U. S., Comp. St. 1901, p. 547, 4 F. S. A. 220; part of paragraph six of § 629, Comp. St. 1901, p. 504, 4 F. S. A. 247.

Paragraph five re-enacts paragraph five of § 711, R. S., Comp. St. 1901, p. 578, 4 F. S. A. 494.

Paragraph six re-enacts paragraph six of § 711, R. S., Comp. St. 1901, p. 578, 4 F. S. A. 497.

Paragraph seven re-enacts paragraph seven of § 711, R. S., Comp. St. 1901, p. 578, 4 F. S. A. 497.

Paragraph eight re-enacts paragraph eight of § 711, R. S., Comp. St. 1901, p. 578, 4 F. S. A. 497.

All of these old sections are repealed by § 297, Judicial Code.

sive jurisdiction which is not exclusive but *concurrent with that of the state courts* of record in the various states where the several districts lie.

Cases where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and involving either a Federal question or diverse citizenship, may be brought either in the Federal district court of the proper district, or on proper proceedings may be removed thereto from state court wherein such district is located.

In many cases under § 24, Judicial Code, the amount in controversy is immaterial. The provision as to value of the matter in controversy is expressly stated in § 24 not to apply to the cases already mentioned as coming under the exclusive jurisdiction of the Federal courts, and also not to apply to suits under any law relating to slave trade;[32] cases under internal revenue, customs and tonnage laws;[33] suits under postal laws;[34] suits for violation of interstate commerce laws;[35] suits on debentures for drawback of duties;[36] suits for injuries on account of acts done under laws of the United States;[37] suits concerning civil rights;[38] suits against persons having knowledge of conspiracy under civil rights laws;[39] suits to redress the deprivation under color of law of civil rights;[40] suits to recover certain offices;[41] suits involving national banking association;[42] suits by aliens for torts;[43] suits under immigration and contract labor laws;[44] suits concerning allotment of lands to Indians;[45] partition suits where United States is a joint tenant.[46] In criminal prosecutions under the foregoing classification or suits for penalties and forfeitures the jurisdiction would be exclusive of the state courts, under § 256, Judicial Code, subds. 1 and 2.[47]

The amount or value in controversy is also immaterial in all suits in law or in equity, brought by the United States or by any officer thereof authorized by law to sue, or between citizens of the same state claiming lands under grants from different states.[48] But if in any action commenced in a

[32] Subd. 4th. [33] Subd. 5th. [34] Subd. 6th. [35] Subd. 8th.
[36] Subd. 10th. [37] Subd. 11th. [38] Subd. 12th. [39] Subd. 13th.
[40] Subd. 14th. [41] Subd. 15th. [42] Subd. 16th. [43] Subd. 17th.
[44] Subd. 22d. [45] Subd. 24th. [46] Subd. 25th. [47] § 192, infra.
[48] Subd. 1st, § 24, Judicial Code, § 194, infra.

state court the title of land be concerned, and the parties are citizens of the same state claiming under land grants of different states, the matter in dispute must exceed $3,000, exclusive of interest and costs, to entitle a party to remove to the Federal court.[49]

§ 194. Original Jurisdiction.

§ 24, Judicial Code,[b] *36 Stat. at L. 1091, Comp. St. 1911, pp. 135–140, 1912 Supp. F. S. A. v. 1, pp. 139–142.*

"The district courts shall have original jurisdiction as follows:—

"First. (Where the United States are plaintiffs; and of civil suits at common law or in equity.) Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same state claiming lands under grants from different states; or where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different states, or (c) is between citizens of a state and foreign states, citizens, or subjects. No district court shall have cognizance of any suit (except upon foreign bills of exchange) to recover upon any promissory note or other chose in action in favor of any assignee, or of any subsequent holder if such instrument be payable to bearer, and be not made by any corporation, unless such suit might have been prosecuted in such court to recover upon said note or other chose in action if no assignment had been made: *Provided, however,* That the foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section.

[49] § 30, Judicial Code, § 262, infra.

[b] Drawn from § 563, R. S., Rose's Code, § 210, Foster's Fed. Prac. (4th ed.) pp. 219, 220, 221, 222, 1672, 1678, Comp. St. 1901, p. 455, 4 F. S. A. 218, and § 629, R. S., Comp. St. 1901, p. 507, 4 F. S. A. 245, which are repealed by § 297, Judicial Code.

Civil suits at law or in equity, see Williams v. Molther et al. 198 Fed. 460, 117 C. C. A. 220. Amount in controversy, see notes to Tennent-Stribling Shoe Co. v. Roper, 94 Fed. 739, 36 C. C. A. 459, and notes to Auer v. Lombard, 19 C. C. A. 75; O. J. Lewis Mercantile Co. v. Klepner, 176 Fed. 343, 100 C. C. A. 288. See chapter 9, post.

United States as a party, see Heckman v. United States, 224 U. S. 413, 56 L. ed. 820, 32 Sup. Ct. Rep. 424.

Diverse citizenship, see ch. 8, infra, notes 10 C. C. A. 249, 27 C. C. A. 298.

District for suit, see United States v. Congress Construction Co. 222 U. S. 199, 56 L. ed. 163, 32 Sup. Ct. Rep. 44. See chapter 5, supra.

"Second. (Of crimes and offenses.) Of all crimes and offenses cognizable under the authority of the United States.

"Third. (Of admiralty causes, seizures, and prizes.) Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it; of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize.

"Fourth. (Of suits under any law relating to the slave trade.) Of all suits arising under any law relating to the slave trade.

"Fifth. (Of cases under internal revenue, customs, and tonnage laws.) Of all cases arising under any law providing for internal revenue, or from revenue from imports or tonnage, except those cases arising under any law providing revenue from imports, jurisdiction of which has been conferred upon the court of customs appeals.

"Sixth. (Of suits under postal laws.) Of all cases arising under the postal laws.

"Seventh. (Of suits under the patent, the copyright, and the trademark laws.) Of all suits at law or in equity arising under the patent, the copyright, and the trademark laws.

"Eighth. (Of suits for violation of interstate commerce laws.) Of all suits and proceedings arising under any law regulating commerce, except those suits and proceedings exclusive jurisdiction of which has been conferred upon the commerce court. (Commerce court now abolished and jurisdiction transferred to district court. See ch. 9 of the Judicial Code, in our Appendix.)

"Ninth. (Of penalties and forfeitures.) Of all suits and proceedings for the enforcement of penalties and forfeitures incurred under any law of the United States.

"Tenth. (Of suits on debentures.) Of all suits by the assignee of any debenture for drawback of duties, issued under any law for the collection of duties, against the person to whom such debenture was originally granted, or against any indorser thereof, to recover the amount of such debenture.

"Eleventh. (Of suits for injuries on account of acts done under laws of the United States.) Of all suits brought by any person to recover damages for any injury to his person or

property on account of any act done by him, under any law of the United States, for the protection or collection of any of the revenues thereof, or to enforce the right of citizens of the United States to vote in the several states.

"Twelfth. (Of suits concerning civil rights.) Of all suits authorized by law to be brought by any person for the recovery of damages on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section nineteen hundred and eighty, Revised Statutes.

"Thirteenth. (Of suits against persons having knowledge of conspiracy, etc.) Of all suits authorized by law to be brought against any person who, having knowledge that any of the wrongs mentioned in section nineteen hundred and eighty, Revised Statutes, are about to be done, and having power to prevent or aid in preventing the same, neglects or refuses so to do, to recover damages for any such wrongful act.

"Fourteenth. (Of suits to redress the deprivation, under color of law, of civil rights.) Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any state, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States.

"Fifteenth. (Of suits to recover certain offices.) Of all suits to recover possession of any office, except that of elector of President or Vice President, Representative in or delegate to Congress, or member of a state legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote, on account of race, color, or previous condition of servitude: *Provided,* That such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Constitution of the United States, and secured by any law, to enforce the right of citizens of the United States to vote in all the states.

"Sixteenth. (Of suits against national banking associations.) Of all cases commenced by the United States, or by

direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title, "National Banks," Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. And all national banking associations established under the laws of the United States shall, for the purpose of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the states in which they are respectively located.

"Seventeenth. (Of suits by aliens for torts.) Of all suits brought by any alien for a tort only, in violation of the laws of nations or of a treaty of the United States.

"Eighteenth. (Of suits against consuls and vice consuls.) Of all suits against consuls and vice consuls.

"Nineteenth. (Of suits and proceedings in bankruptcy.) Of all matters and proceedings in bankruptcy.

"Twentieth. (Of suits against the United States.) Concurrent with the court of claims, of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable, and of all set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the government of the United States against any claimant against the government in said court: *Provided, however,* That nothing in this paragraph shall be construed as giving to either the district courts or the court of claims jurisdiction to hear and determine claims growing out of the late Civil War, and commonly known as "war claims," or to hear and determine other claims which had been rejected or reported on adversely prior to the third day of March, eighteen hundred and eighty-seven, by any court, department, or commission authorized to hear and determine the same, or to hear and determine claims for pensions; or as giving to the district courts jurisdiction of cases brought to recover fees, salary, or compensation for official

services of officers of the United States or brought for such purpose by persons claiming as such officers or as assignees or legal representatives thereof; but no suit pending on the twenty-seventh day of June, eighteen hundred and ninety-eight, shall abate or be affected by this provision: *And provided, further,* That no suit against the government of the United States shall be allowed under this paragraph unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided,* That the claims of married women first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the suit be brought within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively. All suits brought and tried under the provisions of this paragraph shall be tried by the court without a jury.

"Twenty-first. (Of suits for the unlawful inclosure of public lands.) Of proceedings in equity, by writ of injunction, to restrain violations of the provisions of laws of the United States to prevent the unlawful inclosure of public lands; and it shall be sufficient to give the court jurisdiction if service of original process be had in any civil proceeding on any agent or employee having charge or control of the inclosure.

"Twenty-second. (Of suits under immigration and contract labor laws.) Of all suits and proceedings arising under any law regulating the immigration of aliens, or under the contract labor laws.

"Twenty-third. (Of suits against trusts, monopolies, and unlawful combinations.) Of all suits and proceedings arising under any law to protect trade and commerce against restraint and monopolies.

"Twenty-fourth. (Of suits concerning allotments of land to Indians.) Of all actions, suits, or proceedings involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty. And the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by

him; but this provision shall not apply to any lands now or heretofore held by either of the Five Civilized Tribes, the Osage Nation of Indians, nor to any of the lands within the Quapaw Indian Agency: *Provided,* That the right of appeal shall be allowed to either party as in other cases. (Subd. 24 as amended act Dec. 21, 1911, ch. 5, 37 Stat. at L. 46.)

"Twenty-fifth. (Of partition suits where United States is joint tenant.) Of suits in equity brought by any tenant in common or joint tenant for the partition of lands in cases where the United States is one of such tenants in common or joint tenants, such suits to be brought in the district in which such land is situate."

The separate heads of jurisdiction in the section above quoted are set out in connection with statutory provisions on exclusive jurisdiction, removal, amount in controversy, and venue in chapter 12, entitled, "Summaries—Original Jurisdiction, Removal, Amount, Venue, for the Several Matters of District Court Cognizance."

§ 195. Jurisdiction by Assignment.[51] In the latter part of subdivision first, § 24, Judicial Code, quoted in § 194, supra, it is provided as follows:

"No district court shall have cognizance of any suit (except upon foreign bills of exchange) to recover upon any promissory note or other chose in action in favor of any assignee, or of any subsequent holder, if such instrument be not made by any corporation, unless such suit might have been prosecuted in such court to recover upon said note or other chose in action if no assignment had been made."

The purpose of this provision is to prevent the conferring of jurisdiction on the district courts by fraudulent assignments creating an apparent diversity of citizenship.[52]

The exceptions permitting assignees to bring suit are: 1st, Suits upon foreign bills of exchange; 2d, suits that might have been prosecuted in such courts if no assignment had been made;

[51] See note to 4 F. S. A. 306, 311; Simpkin's Federal Equity Suit, 2d ed. pp. 208–222.

[52] See Barclay v. Levee's Commissioners, 1 Woods, U. S. 254, 2 Fed. Cas. No. 977.

3d, suits upon choses in action made by a corporation payable to bearer.[53]

Another exception is where the assignor is merely the nominal owner.[54] The objection may be raised at any time.[55]

The matter being jurisdictional, where the citizenship of the original payee is material, it should be shown in the bill, distinctly alleged, and not by inference. The form of allegation may be as follows:

"John Doe, plaintiff alleges that at all times since the assignment to him of the within cause of action, he was and is a citizen of the State of ....., and a resident of the County of ..... in said State; that his assignor, Henry Smith, at all times hereinafter mentioned was and is a citizen of the State of ..... and a resident of the County of ..... in said State, and competent to have prosecuted in this Court a suit upon the cause of action herein set out if no assignment had been made; that defendant, Richard Roe, at all times hereinafter mentioned, was and is a citizen of the State of ..... residing in said County of said state."

It is not enough to allege in the complaint that the assignor was a citizen of a different state from defendant, but there must be shown diverse citizenship of the assignor and the defendant at the time of bringing the suit.[56]

In order to remove a case from a state to the Federal court, the bill filed in the state court must show proper citizenship of the assignors.[57]

Objection may be made by motion to dismiss if the defect appears on the face of the complaint, or in the answer, under Equity Rule 29, in equity suits; or in an action at law by an appropriate form of state pleading provided to raise jurisdictional points. The following is suggested as matter to be incorporated in whatever form of pleading is used to raise the objection:

"Defendant further alleges that the bill of complaint shows that plaintiff

[53] See Newgass v. New Orleans, 33 Fed. 196, 198; Wilson v. Knox Co. 43 Fed. 481; New Orleans v. Quinlan, 173 U. S. 191, 43 L. ed. 664, 19 Sup. Ct. Rep. 329; Quinlan v. New Orleans, 92 Fed. 695; Skinner v. Bar, 77 Fed. 816.

[54] Kirven v. Virginia Carolina Chemical Co. 145 Fed. 288, 7 Ann. Cas. 219, 76 C. C. A. 172.

[55] Utah-Nevada Co. v. De Lamar, 133 Fed. 113, 66 C. C. A. 179.

[56] Benjamin v. City of New Orleans, 71 Fed. 758; same case circuit court of appeals, 74 Fed. 417, 20 C. C. A. 591, 41 U. S. Appeal, 178.

[57] Simkin's Fed. Equity Suit 2d ed. p. 220.

derives title and right to sue through an assignment from Henry Smith, that said Henry Smith was and is now a citizen of the State of .....; and, therefore, that there is no diversity of citizenship on which to base the jurisdiction of this court in this suit."

§ 196. Agriculture.

§ *5, Act of April 26, 1910, Ch. 191, Comp. St. 1911, p. 1370, 1912 Supp. F. S. A. v. 1, p. 4.* "That it shall be the duty of each district attorney to whom the Secretary of Agriculture shall report any violation of this act, or to whom any director of experiment station or agent of any state, territory, or the District of Columbia, under authority of the Secretary of Agriculture, shall present satisfactory evidences of any such violation, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States, without delay, for the enforcement of the penalties as in such case herein provided. (36 Stat. at L. 332.)"

§ 197. Alien Enemies.

§ *4069, R. S., Comp. St 1901, pp. 2762, 2763, 1 F. S. A. 436.* "After any such proclamation has been made, the several courts of the United States having criminal jurisdiction, and the several justices and judges of the courts of the United States, are authorized, and it shall be their duty, upon complaint against any alien enemy resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President may have established, to cause such alien to be duly apprehended and conveyed before such court, judge, or justice; and after a full examination and hearing on such complaint, and sufficient cause appearing, to order such alien to be removed out of the territory of the United States, or to give sureties for his good behavior, or to be otherwise restrained, conformably to the proclamation or regulations established as aforesaid, and to imprison or otherwise secure such alien, until the order which may be so made shall be performed."

§ 198. Same—Duties of Marshal.

§ *4070, R. S., Comp. St. 1901, p. 2763, 1 F. S. A. 436.* "When an alien enemy is required by the President, or by order of any court, judge, or justice, to depart and to be re-

moved, it shall be the duty of the marshal of the district in which he shall be apprehended to provide therefor, and to execute such order in person, or by his deputy, or other discreet person to be employed by him, by causing a removal of such alien out of the territory of the United States; and for such removal the marshal shall have the warrant of the President, or of the court, judge, or justice ordering the same, as the case may be."

§ 199. Customs Duties.

§ *3, Act June 10, 1910, Ch. 283, Comp. St. 1911, pp. 893, 894, 1912 Supp. F. S. A. v. 1, p. 49.* "That any licensed custom-house broker aggrieved by the decision of the Secretary of the Treasury may, within thirty days thereafter, and not afterwards, apply to the United States circuit court for the circuit in which the collection district is situated for a review of such decision. Such application shall be made by filing in the office of the clerk of said court a petition praying relief in the premises. Thereupon the court shall immediately give notice in writing of such application to the Secretary of the Treasury, who shall forthwith transmit to said court the record and evidence taken in the case, together with a statement of his decision therein. The filing of such application shall operate as a stay of the revocation of the license. The matter may be brought on to be heard before the said court in the same manner as a motion, by either the United States district attorney or the attorney for the custom-house broker, and the decision of said United States circuit court for the circuit in which the collection district is situated shall be upon the merits as disclosed by the record and be final, and the proceedings remanded to the Secretary of the Treasury for further action to be taken in accordance with the terms of the decree. (36 Stat. at L. 465.)"

See subd. 5, § 24, Judicial Code, quoted § 194, infra, giving the district court original jurisdiction of cases arising under the customs laws.

§ 200. Rivers, Harbors, and Canals—Actions to Remove Obstructions.

Pt. § 5, Act June 23, 1910, Ch. 360, 36 Stat. at L. 595,

Comp. St. 1911, p. 1561, 1912 Supp. F. S. A. v. 1, p. 348. "And the removal or (of) any structures erected or maintained in violation of the provisions of this act or the order or direction of the Secretary of War or the Chief of Engineers made in pursuance thereof may be enforced by injunction, mandamus, or other summary process, upon application to the circuit court in the district in which such structure may, in whole or in part, exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States at the request of the Chief of Engineers or the Secretary of War; and in case of any litigation arising from any obstruction or alleged obstruction to navigation created by the construction of any dam under this act the cause or question arising may be tried before the circuit court of the United States in any district in which any portion of said obstruction or dam touches."

§ 201. White Slave Traffic.

§ *5, Act June 25, 1910, Ch. 395, 36 Stat. at L. 826, Comp. St. 1911, p. 1345.* "That any violation of any of the above sections two, three, and four shall be prosecuted in any court having jurisdiction of crimes within the district in which said violation was committed, or from, through, or into which any such woman or girl may have been carried or transported as a passenger in interstate or foreign commerce, or in any territory, or the District of Columbia, contrary to the provisions of any of said sections."

§ 202. Appellate Jurisdiction Chinese Exclusion Laws.

§ *25, Judicial Code,*[c] *36 Stat. at L. 1094, Comp. St. 1911, p. 140, 1912 Supp. F. S. A. v. 1, p. 143.* "The district courts shall have appellate jurisdiction of the judgments and orders of United States commissioners in cases arising under the Chinese exclusion laws."

§ 203. Appellate Jurisdiction Yellowstone National Park.

§ *26, Judicial Code,*[d] *36 Stat. at L. 1094, Comp. St.*

[c] Drawn from act of Sept. 13, 1888, ch. 1015, § 13, Rose's Code, § 2405, Foster's Fed. Prac. (4th ed.) p. 222, 25 Stat. at L. 479, Comp. St. 1901, p. 1317, 1 F. S. A. 772.

[d] Re-enacting act of May 7, 1894, ch. 72, 28 Stat. at L. 74, Comp. St. 1901, p. 1563, 6 F. S. A. 620.

1911, p. 140, 1912 Supp. F. S. A. v. 1, p. 144. "The district court of the district of Wyoming shall have jurisdiction of all felonies committed within the Yellowstone National Park, and appellate jurisdiction of judgments in cases of conviction before the commissioner authorized to be appointed under section five of an act entitled, "An Act to Protect the Birds and Animals in Yellowstone National Park, and to Punish Crimes in Said Park, and for Other Purposes," approved May seventh, eighteen hundred and ninety-four."

§ 204. Jurisdiction of Crimes on Indian Reservations South Dakota.

§ *27, Judicial Code,*[e] *36 Stat. at L. 1094, Comp. St. 1911, p. 140, 1912 F. S. A. v. 1, p. 144.* "The district court of the United States for the district of South Dakota shall have jurisdiction to hear, try, and determine all actions and proceedings in which any person shall be charged with the crime of murder, manslaughter, rape, assault with intent to kill, arson, burglary, larceny, or assault with a dangerous weapon, committed within the limits of any Indian reservation in the state of South Dakota."

§ 205. Power to Enforce Foreign Consular Awards.

§ *271, Judicial Code,*[f] *36 Stat. at L. 1163, Comp. St. 1911, p. 237, 1912 Supp. F. S. A. v. 1, p. 244.* "The district courts and the United States commissioners shall have power to carry into effect, according to the true intent and meaning thereof, the award or arbitration or decree of any consul, vice consul, or commercial agent of any foreign nation, made or rendered by virtue of authority conferred on him as such consul, vice consul, or commercial agent, to sit as judge or arbitrator in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to his charge, application for the exercise of such power being first made to such court or commissioner, by petition of such consul, vice consul, or commercial agent. And said courts and commissioners may

[e] Re-enacting act of February 2, 1903, ch. 351, Rose's Code, § 155, 32 Stat. at L. 793, Foster's Fed. Prac. (4th ed.) pp. 257, 258, 10 F. S. A. 121. In general, Hollister v. United States, 145 Fed. 733, 76 C. C. A. 337.

[f] Re-enacting of § 728, R. S., Rose's Code, §§ 158, 646, 1286, Comp. St. 1901, p. 584, 4 F. S. A. 551, which section is repealed by § 297, Judicial Code. In general, United States v. Allred, 155 U. S. 591, 39 L. ed. 273, 15 Sup. Ct. Rep. 231.

issue all proper remedial process, mesne and final, to carry into full effect such award, arbitration, or decree, and to enforce obedience thereto by imprisonment in the jail or other place of confinement in the district in which the United States may lawfully imprison any person arrested under the authority of the United States, until such award, arbitration, or decree is complied with, or the parties are otherwise discharged therefrom, by the consent in writing of such consul, vice consul, or commercial agent, or his successor in office, or by the authority of the foreign government appointing such consul, vice consul, or commercial agent: *Provided, however,* That the expenses of the said imprisonment and maintenance of the prisoners, and the cost of the proceedings, shall be borne by such foreign government, or by its consul, vice consul, or commercial agent requiring such imprisonment. The marshals of the United States shall serve all such process, and do all other acts necessary and proper to carry into effect the premises under the authority of said courts and commissioners."

§ 206. Powers of Foreign Consuls over Disputes between Seamen.

§ 4079, R. S., Comp. St. 1901, p. 2766, 2 F. S. A. 817, Rose's Code, § 1524. "Whenever it is stipulated by treaty or convention between the United States and any foreign nation that the consul general, consuls, vice consuls, or consular or commercial agents of each nation, shall have exclusive jurisdiction of controversies, difficulties, or disorders arising at sea or in the waters or ports of the nation, between the master or officers and any of the crew, or between any of the crew themselves, of any vessel belonging to the nation represented by such consular officer, such stipulations shall be executed and enforced within the jurisdiction of the United States as hereinafter declared. But before this section shall take effect as to the vessels of any particular nation having such treaty with the United States, the President shall be satisfied that similar provisions have been made for the execution of such treaty by the other contracting party, and shall issue his proclamation to that effect, declaring this section to be in force as to such nation."

§ 207. Arrest of Seamen on Application of Consul.

§ 4080, R. S., Comp. St. 1901, pp. 2766, 2767, 2 F. S. A.

818, Rose's Code, § 1525. "In all cases within the purview of the preceding section, the consul general, consul, or other consular or commercial authority of such foreign nation charged with the appropriate duty in the particular case, may make application to any court of record of the United States, or to any judge thereof, or to any commissioner of a circuit court, setting forth that such controversy, difficulty, or disorder has arisen, briefly stating the nature thereof, and when and where the same occurred, and exhibiting a certified copy or extract of the shipping-articles, roll, or other proper paper of the vessel, to the effect that the person in question is of the crew or ship's company of such vessel; and further stating and certifying that such person has withdrawn himself, or is believed to be about to withdraw himself, from the control and discipline of the master and officers of the vessel, or that he has refused, or is about to refuse, to submit to and obey the lawful jurisdiction of such consular or commercial authority in the premises; and further stating and certifying that, to the best of the knowledge and belief of the officer certifying, such person is not a citizen of the United States. Such application shall be in writing and duly authenticated by the consular or other sufficient official seal. Thereupon such court, judge, or commissioner shall issue his warrant for the arrest of the person so complained of, directed to the marshal of the United States for the appropriate district, or in his discretion to any person, being a citizen of the United States, whom he may specially depute for the purpose, requiring such person to be brought before him for examination at a certain time and place."

§ 208. Commitment and Discharge.

§ 4081, R. S., Comp. St. 1901, p. 2767, 2 F. S. A. 818, Rose's Code, § 1526. "If, on such examination, it is made to appear that the person so arrested is a citizen of the United States, he shall be forthwith discharged from arrest, and shall be left to the ordinary course of law. But if this is not made to appear, and such court, judge, or commissioner finds, upon the papers hereinbefore referred to, a sufficient prima facie case that the matter concerns only the internal order and discipline of such foreign vessel, or, whether in its nature civil or criminal, does not affect directly the execution of the laws of the United States, or the rights and duties of any citizen of the United States, he shall forthwith, by

his warrant, commit such person to prison, where prisoners under sentence of a court of the United States may be lawfully committed, or, in his discretion, to the master or chief officer of such foreign vessel, to be subject to the lawful orders, control, and discipline of such master or chief officer, and to the jurisdiction of the consular or commercial authority of the nation to which such vessel belongs, to the exclusion of any authority or jurisdiction in the premises of the United States or any state thereof. No person shall be detained more than two months after his arrest, but at the end of that time shall be set at liberty and shall not again be arrested for the same cause. The expenses of the arrest and the detention of the person so arrested shall be paid by the consular officers making the application."

§ 209. Jurisdiction in Cases Transferred from Territorial Courts.

§ *64, Judicial Code,*[g] *36 Stat. at L. 1104, Comp. St. 1911, p. 155, 1912 Supp. F. S. A. v. 1, p. 158.* "When any territory is admitted as a state, and a district court is established therein, the said district court shall take cognizance of all cases which were pending and undetermined in the trial courts of such territory, from the judgments or decrees to be rendered in which writs of error could have been sued out or appeals taken to the Supreme Court or to the circuit court of appeals, and shall proceed to hear and determine the same."

§ 210. Jurisdiction under Reclamation Act.

§ *5, Act August 9, 1912, Ch. 278, 37 Stat. at L. 67.* "That jurisdiction of suits by the United States for the enforcement of the provisions of this act is hereby conferred on the United States district courts of the districts in which the lands are situated."

§ 211. Jurisdiction under Income Tax Law.

§ *3176, subd. K, Act Oct. 3, 1913, Ch. 16, 38 Stat. at L. 179.* "That jurisdiction is hereby conferred on the district courts of the United States within which any person summoned under this section to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony, by appropriate process.

[g] Re-enacting substantially § 569, R. S., Rose's Code, § 213, Foster's Fed. Prac. (4th ed.) p. 1455, Comp. St. 1901, p. 462, 4 F. S. A. 238, which section is repealed by § 297, Judicial Code. In general, Dunton et al. v. Muth et al. 45 Fed. 390.

§ 212. Jurisdiction in Arbitration of Disputes between Common Carriers and Employees.

Pt. § 5, Act July 15, 1913, Ch. 6, 38 Stat. at L. 106. Arbitrators under the above act "may invoke the aid of the United States court to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as is provided for in the act to regulate commerce approved February fourth, 1887, and amendments thereto."

§ 8, Act July 15, 1913, Ch. 6, 38 Stat. at L. 107. "That the award, being filed in the clerk's office of a district court of the United States as hereinbefore provided, shall go into practical operation, and judgment shall be entered thereon accordingly at the expiration of ten days from such filing, unless within ten days either party shall file exceptions thereto for matter of law apparent on the face of the record, in which case said award shall go into practical operation, and judgment be entered accordingly, when such exceptions shall have been finally disposed of either in the district court or on appeal therefrom. At the expiration of ten days from the decision of the district court upon exceptions taken to said award as aforesaid, judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of questions of law presented by said exceptions and to be decided. The determination of the circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to the district court, judgment pursuant thereto shall thereupon be entered by said district court. If exceptions to an award are finally sustained, judgment shall be entered setting aside the award in whole or in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject-matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award. Nothing in this act shall be construed to require an employee to render personal service without his consent, and no injunction or other legal process shall be issued which shall compel the performance by any employee against his will of a contract for personal labor or service."

CHAPTER 7.

FEDERAL QUESTION—GROUND OF JURISDICTION.

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225. How Question Must Appear in a State Court to Be Removed to Federal Court.
226. Raising the Issue as to Federal Question.

§ 215. What Is a Federal Question? A Federal question is one arising under the Constitution or a law of the United States or treaties made, whenever the correct decision of the suit depends upon the construction of either, or when the title or right set up by the party may be defeated by one construction or sustained by the opposite construction.[1]

A Federal question does not arise merely because it becomes necessary in the progress of the litigation to construe the Federal Constitution, laws, or treaties.[2]

[1] Cohens v. Virginia, 6 Wheat. 379, 5 L. ed. 285; Osborn v. Bank, 9 Wheat. 822, 6 L. ed. 224; Oregon v. Three Sisters Irrigation Company, 158 Fed. 346; Hall v. Chicago, etc., Railroad Company, 149 Fed. 564.

[2] Miller v. Illinois Central R. Co. 168 Fed. 982; Leggett v. Great Northern R. Co. 180 Fed. 314.

§ 216. Arises in Suits with Federal Officers Involving Official Acts.

Pt. § 24, Judicial Code,[a] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 139.* "The district court shall have original jurisdiction as follows:

"First. Of all suits of a civil nature, at common law or in equity, brought by the United States, *or by an officer thereof* authorized by law to sue. . . ."

Suits brought by Federal officers find their authority in this section and preceding provisions of the law of like character. Suits against Federal officers stand on a different footing and are discussed hereafter. A receiver of a national bank appointed by a Comptroller of Currency comes within this clause, and may sue without regard to the citizenship of the parties or the amount involved.[3] So, also, an agent of a national bank who has displaced a receiver comes under the rule,[4] and a Postmaster General suing under the official bond of a postmaster.[5]

Suits *against* United States officers do not come under the above quoted provision,[6] but are held to arise under the laws of the United States as necessarily involving the construction thereof.

"An action against a United States marshal and his deputy, growing out of their acts in executing the process of a court of the United States, is, regardless of citizenship of the parties, within the jurisdiction of the United States circuit (now district) court for the proper district; and this is so even where there is no disputed question of Federal law in the case." [7]

"A case in which an attack upon the official acts of a United States marshal is made covertly, by suppressing the facts which constitute an essential part of the *res gestæ* in the first pleading, is none the less a case arising under the laws of the United States." [8]

[3] Gibson v. Peters, 150 U. S. 342, 37 L. ed. 1104, 14 Sup. Ct. Rep. 134; Schofield v. Palmer, 134 Fed. 753; Murray v. Chambers, 151 Fed. 142.

[4] McConville v. Gilmour, 36 Fed. 277, 1 L.R.A. 498.

[5] Postmaster General v. Early, 12 Wheat. 136, 6 L. ed. 577; Postmaster General v. Furber, 4 Mason, 333, 19 Fed. Cas. No. 11,308.

[6] Hallam v. Tillinghast, 75 Fed. 849.

[7] Wood v. Drake, 70 Fed. 882, citing Bock v. Perkins, 139 U. S. 628, 35 L. ed. 314, 11 Sup. Ct. Rep. 677; Grant v. Bank, 47 Fed. 673.

[8] Ibid.

[a] For annotation of this § 24, Judicial Code, see footnote [b], ante, § 194.

"The national government must be permitted to exercise its power within the states through its own agencies. The national courts are the proper tribunals for adjudicating of questions as to the validity of their own process, and the lawfulness of the acts of their own ministers in executing the same." [9]

The following are illustrations of suits by and against Federal officers held to involve Federal question by reason of the character of the party:

Action against executors and heirs of an internal revenue collector to recover taxes alleged to have been illegally collected by such collector; [10] a suit upon a bond of the clerk of the circuit court; [11] on bond of a marshal; [12] to recover damages for wrongful levy by marshal; [13] suit on government contractor's bond.[14]

Special provision is made for removal of cases against a United States officer acting under the civil rights laws.

> *Pt. § 31, Judicial Code,*[b] *36 Stat. at L. 1906, Comp. St. 1911, p. 143, 1912 Supp. F. S. A. v. 1, p. 147.* "When any civil suit or criminal prosecution is commenced in any state court, for any cause whatsoever, . . . against any officer, civil or military, or other person, for any arrest or imprisonment or other trespasses or wrongs made or committed by virtue of or under color of authority derived from any law providing for equal rights as aforesaid, or refusing to do any act on the ground that it would be inconsistent with such law, such suit or prosecution may, upon the petition of such defendant, filed in said state court at any time before the

[9] Wood v. Drake, 70 Fed. 881–883, and cases cited.

[10] Sinking Fund Commissioners v. Buckner, 48 Fed. 533; see also Orner v. Saunders, 3 Dill 284–18, Fed. Cas. No. 10,584.

[11] Howard v. United States, 184 U. S. 681, 46 L. ed. 754, 22 Sup. Ct. Rep. 543.

[12] Feiberman v. Packard, 109 U. S. 421, 27 L. ed. 984, 3 Sup. Ct. Rep. 289.

[13] Hurst v. Cobb, 61 Fed. 1. But see McKee v. Rains, 10 Wall. 22, 19 L. ed. 860, where a suit against a marshal for trespass is levying on goods for a third party, held not to involve a Federal question.

[14] Mullin v. United States, 109 Fed. 817, 48 C. C. A. 677.

[b] Re-enacting § 641, R. S., Rose's Code, §§ 137, 1149, 1150, 1151, Foster's Fed. Prac. (4th ed.) pp. 43, 1201, 1458, 1463, 1511, 1514, 1528, 1531, 1576, Comp. St. 1901, p. 520, 4 F. S. A. 258, which section is repealed by § 297, Judicial Code.

Constitutional. Ex parte Virginia, 100 U. S. 339, 25 L. ed. 676; Strauder v. West Virginia, 100 U. S. 310, 25 L. ed. 667; California v. Chue Fan, 42 Fed. 865.

trial or final hearing of the cause stating the facts and verified by oath, be removed for trial into the next district court to be heard in the district where it is pending. . . ."

Federal receivers.

It was formerly held that a Federal question arose in the case of receivers appointed by Federal courts by virtue of a Federal appointment. But it is now held that such appointment does not raise a Federal question so as to allow removal to a Federal court on that ground.[15]

§ 66 of the Judicial Code permits a Federal receiver to be sued without previous leave of the court in respect to any act or transaction of his in carrying on the business connected with the property.

§ 217. Arises in Suits with Federal Corporations Existing under Federal Laws. A Federal corporation is organized under and depends upon a Federal law. It is held that a suit against a Federal corporation therefore involves a Federal question irrespective of the citizenship of the parties or any other law involved. If a complaint filed in the state court shows on its face that the defendant corporation is one organized under Federal laws, except in cases of national banks,[16] the suit may be removed to the Federal court as presenting a Federal question.[17]

It has even been held that the suit is removable, though there is nothing in the plaintiff's pleading showing that defendant is a Federal corporation.[18] But a different holding appears in Oregon Short Line v. Skottoee, 162 U. S. 490, 16 Sup. Ct. Rep. 869, 40 L. ed. 1048.

[15] Pope v. Louisville R. R. Co. 173 U. S. 573, 43 L. ed. 814, 19 Sup. Ct. Rep. 500, and other cases cited in Simkin's Federal Equity Suit, 2d ed. p. 163; Dale v. Smith, 182 Fed. 360; People v. Bleecker St. R. Co. 178 Fed. 156; Pepper v. Rogers, 128 Fed. 987; Rural Home Telephone Co. v. Powers, 176 Fed. 986.

[16] § 213, post.

[17] Pacific Railroad Removal Cases, 115 U. S. 1, 5 Sup. Ct. Rep. 1113, 29 L. ed. 319; Simkin's Fed. Eq. Suit (2d ed.) ch. 25.

[18] Texas etc. R. R. Co. v. Cody, 166 U. S. 606, 17 Sup. Ct. Rep. 703, 41 L. ed. 1132; Supreme Lodge, etc., v. Wilson, 66 Fed. 785, 14 C. C. A. 264; Sullivan v. Barnard, 81 Fed. 886; Pitkin v. Cowen, 91 Fed. 599; Water v. Keyes, 96 U. S. 199, 24 L. ed. 656.

§ 218. Exception—Suits with National Banks Other Than by or against Officers of the United States.

Subd. 16, § 24, Judicial Code, 36 Stat. at L. 1091, Comp. St. 1911, p. 138, 1912 Supp. F. S. A. v. 1, p. 140. "Of all cases commenced by the United States, or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title 'National Banks,' Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the states in which they are respectively located."

The latter part of this section places national banks on the same footing as individuals of other corporations with respect to the right to sue and be sued in the Federal courts. There must be either diversity of citizenship, or a Federal question otherwise involved, to permit suits by or against national banks under this provision.[19]

§ 219. Arising under the Constitution. Questions too numerous to discuss in this work, arise under the Federal Constitution.

§ *10, art. 1, U. S. Const.* "No state shall . . . pass any . . . law impairing the obligation of contracts . . ."[20]

§ *1, art. 4, U. S. Const.* "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every state . . ."[21]

[19] American National Bank v. Tappan, 174 Fed. 431; State Nat. Bank v. Eureka Springs Water Co. 174 Fed. 827; Continental Nat. Bank v. Buford, 191 U. S. 123, 48 L. ed. 119, 24 Sup. Ct. Rep. 54; and other cases cited in 5 F. S. A. p. 195.

[20] 8 F. S. A. pp. 748 to 889.

[21] 9 F. S. A. pp. 141 to 157.

§ *2, art. 4, U. S. Const.* "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." [22]

Pt. § *1, 14th Amendment U. S. Const.* ". . . no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; [23] nor deny to any person within its jurisdiction the equal protection of the laws." [24]

§ *1, 15th Amendment U. S. Const.* "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude." [25]

§ 220. As a Ground of Original Jurisdiction.

Cl. 1, § *1, art. 3, U. S. Const.* "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior court as Congress may from time to time ordain and establish. . . ."

Cl. 1, § *2, art. 3, U. S. Const.* "The judicial powers shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; . . ."

Under the foregoing provisions of the United States Constitution, Congress establishes the United States district courts as the courts of original jurisdiction with certain limitations as to grounds of jurisdiction and as to the amount in controversy. One of those grounds of jurisdiction is the existence of a Federal question.

Pt. § *24, Judicial Code.* "The district courts have original jurisdiction as follows:

First. ". . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United

[22] 9 F. S. A. pp. 158 to 183.
[23] 9 F. S. A. pp. 416 to 537.
[24] Ibid. pp. 538 to 624.
[25] 9 F. S. A. pp. 636–639.

States, or treaties made, or which shall be made, under their authority, . . . *Provided, however,* That the foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section. . . ."

§ 221. As a Ground for Removal. Under the constitutional provision quoted in the preceding section, Congress has power to provide for the removal of suits from state courts to the Federal courts when such courts have original or appellate jurisdiction in such suits.[26]

The jurisdiction on removal depends upon the original jurisdiction in the district court, and therefore separate consideration is unnecessary, except in so far as the general subject of removal is treated in chapter 10, entitled, "Removal of Causes—Jurisdiction and Procedure."

It should be noted, however, that under the last part of § 28, Judicial Code, 36 Stat. at L. 1094, Comp. St. 1911, p. 141, 1912 Supp. F. S. A. v. 1, p. 145, actions based on Federal "Employers' liability law" are not removable although the district courts have original jurisdiction concurrent with that of the state courts in that kind of action.

Pt. § 28, Judicial Code, 36 Stat. at L. 1094, 1912 Supp. F. S. A. v. 1, p. 145.[c] "Any suit of a civil nature, at law

[26] Mayor, etc., of Nashville v. Cooper, 6 Wall. 247, 18 L. ed. 851.

[c] Re-enacting 25 Stat. at L. 434, Comp. St. 1901, p. 509, 4 F. S. A. 312, changing the words "circuit court" to "district court," which statute is repealed by § 297, Judicial Code. The last proviso re-enacts 35 Stat. at L. 66, 1909 Supp. F. S. A. 585, which statute is repealed by § 297, Judicial Code.

Foulk v. Gray, 120 Fed. 156; Smith v. Lyon, 133 U. S. 315, 33 L. ed. 635, 10 Sup. Ct. Rep. 303; In re Pennsylvania Co. 137 U. S. 457, 34 L. ed. 741, 11 Sup. Ct. Rep. 143; Hanrick v. Hanrick, 153 U. S. 192, 38 L. ed. 685, 14 Sup. Ct. Rep. 835; In re Cilley, 58 Fed. 977; Gumbel v. Pitkin, 124 U. S. 131, 31 L. ed. 374, 8 Sup. Ct. Rep. 379.

Suits at law or in equity, Western Union Teleg. Co. v. Louisville & I. R. Co. et al. 201 Fed. 932; In re Silvies River, 199 Fed. 495.

Constitution, laws, or treaties, Anaconda Copper Mining Co. v. Butte-Balaklava Copper Co. 200 Fed. 808.

As to nonresidents, see Wind River Lumber Co. v. Frankfort Marine Accident & Plate Glass Ins. Co. 196 Fed. 340.

As to separable controversy, In re Silvies River, 199 Fed. 495.

Diverse citizenship, Anaconda Copper Mining Co. v. Butte-Balaklava Copper Co. 200 Fed. 808.

Remanding, Rice v. Boston & M. R. R. 203 Fed. 580.

or in equity, arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, of which the district courts of the United States were given original jurisdiction by this title, which may now be pending or which may hereafter be brought, in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district. . . ."

§ 222. Citizenship Not Material in Suits Involving a Federal Question except When Affecting Venue. The existence of a Federal question is sufficient to sustain jurisdiction of the Federal court independent of citizenship, provided the requisite amount or value is involved and the venue properly laid.

Citizens of the same state may sue each other in the Federal courts if a Federal question is involved.[27]

Equity Rule 25 requires the citizenship and residence of each party to be set out in the bill.[28] In suits based on a Federal question the citizenship and residence of the parties is immaterial except in transitory actions where the residence of the defendant fixes the venue of the action under § 51, Judicial Code.

The requirements of the rule as to citizenship and residence in suits based on a Federal question are chiefly for the sake of uniformity and to identify the parties. In such suits of a local nature, citizenship and residence of any of the parties are otherwise immaterial.

If the basis of the Federal court's jurisdiction is diverse citizenship as well as a Federal question, necessarily a proper showing of citizenship is essential.

§ 223. Amount Required to Be in Controversy.[29] In that part of § 24, Judicial Code, quoted in § 220 above, it will be noted that, in cases based on a Federal question, the matter in contro-

[27] San Joaquin, etc., River Canal Co. v. Stanislaus County, 90 Fed. 520; Lund v. Chicago, etc., R. Co. 78 Fed. 385; Jewett v. Whitcomb, 69 Fed. 417; United States Express Co. v. Allen, 39 Fed. 712; Ames v. Kansas, 111 U. S. 449, 28 L. ed. 482, 4 Sup. Ct. Rep. 437; Owings v. Norwood. 5 Cranch, 344, 3 L. ed. 120; Patton v. Brady, 184 U. S. 611, 46 L. ed. 715, 22 Sup. Ct. Rep. 493.

[28] § 892, infra.

[29] "Amount in Controversy as Affecting Jurisdiction," ch. 9, post.

versy, exclusive of interest and costs, must exceed the sum or value of $3,000, except in certain cases arising under Federal laws enumerated in subdivisions second to twenty-five of that section, or if brought by the United States, or its officers.

To make diverse citizenship the ground of jurisdiction, the amount in controversy must always exceed $3,000, exclusive of interest and costs.

Where less than such amount is involved diverse citizenship is not material; there must be a Federal question on which to base jurisdiction.

As the jurisdiction on removal depends on the original jurisdiction conferred on the district court, the amount required to be in controversy on removal is the same as that necessary to sustain the case if originally brought in the Federal court.

§ 224. Question Must Appear on the Face of the Bill in the Federal Court. To entitle a plaintiff to bring a suit originally in the United States district court, the Federal question must appear on the face of his bill as a part of his cause of action.[30] It must be real, and not colorable merely.[31] It must be essential to his cause of action, and not merely in anticipation of a defense based on that ground.[32]

§ 225. How Question Must Appear in a State Court to Be Removed to Federal Court. To entitle a defendant to remove a case from the state court to the United States district court, the Federal question must appear on the face of the initial pleading in the state court. The defendant cannot, in his petition

[30] City R. Co. v. Citizens' Street R. Co. 166 U. S. 557, 41 L. ed. 1114, 17 Sup. Ct. Rep. 653; St. Paul, M. & M. R. Co. v. St. Paul & N. P. R. Co. 15 C. C. A. 167, 68 Fed. 2; New Orleans v. New Orleans Water Works, 142 U. S. 79, 35 L. ed. 943, 12 Sup. Ct. Rep. 142; Hamblin v. Land Co. 147 U. S. 532, 37 L. ed. 267, 13 Sup. Ct. Rep. 353; St. Louis, etc., R. Co. v. State of Missouri, 156 U. S. 478, 39 L. ed. 502, 15 Sup. Ct. Rep. 443.

[31] Tennessee v. Union, etc., Bank, 152 U. S. 454, 38 L. ed. 511, 14 Sup. Ct. Rep. 654, and other cases cited in 4 F. S. A. 282.

[32] Florida Central R. Co. v. Bell, 176 U. S. 321, 44 L. ed. 486, 20 Sup. Ct. Rep. 399, and other cases cited in 4 F. S. A. 283.

for removal, set up the facts supplementing plaintiff's pleading so as to show a Federal question.[33]

The defendant, however, is not precluded in such a case from obtaining the determination of a Federal court as to a Federal question involved in the suit, for if the plaintiff's pleading does not show such question, the defendant may, nevertheless, set up the Federal question in his own pleading, and thus preserve the right of review by the Supreme Court of the United States on writ of error. This subject is treated more in detail in chapter 11, entitled, "Removal from State Court of Last Resort to United States Supreme Court by Writ of Error—Jurisdiction."

§ 226. Raising the Issue as to Federal Question. The want of a Federal question, being a matter of jurisdiction, may be raised under Equity Rule 29, either by a motion to dismiss or in the answer and separately heard, and in an action at law by the appropriate defensive pleading provided for raising jurisdictional questions in the state court,—generally by demurrer if the defect appears on the face of the complaint, or by plea or answer if it does not so appear. In case of removal the objection would be made in a motion to remand. In the event that a Federal question is properly pleaded, but is fraudulently made for the purpose of giving jurisdiction when no actual Federal question is involved it would be set up in the answer under Equity Rule 29 in some such form as follows:

Defendant further answering alleges that this suit does not really and substantially involve a controversy within the jurisdiction of this court in that this suit is wholly based on the alleged existence of a Federal question; that the allegations in plaintiff's complaint that this suit is dependent (here state allegations mentioned in complaint as ground of Federal jurisdiction), are not made truly and in good faith but are stated with a false and fraudulent purpose of imposing upon the jurisdiction of this court and are therefore fictitious and fraudulent.

Wherefore defendant prays that the suit be dismissed or remanded with costs.

[33] Tennessee v. Union & Planters Bank, 152 U. S. 454, 38 L. ed. 511, 14 Sup. Ct. Rep. 654; Chappell v. Waterworth, 155 U. S. 102, 39 L. ed. 85, 15 Sup. Ct. Rep. 34; Walker v. Collins, 1 C. C. A. 642, 50 Fed. 737, 8 C. C. A. 1, 59 Fed. 70, reversed in Walker v. Collins, 167 U. S. 58, 42 L. ed. 76, 17 Sup. Ct. Rep. 738; Mayo v. Dockery, 108 Fed. 897.

CHAPTER 8.

DIVERSE CITIZENSHIP.

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§ 230. In General.

Pt. § 24, Judicial Code,[a] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 139.* "The district courts shall have original jurisdiction as follows:—

"First. Of all suits of a civil nature, at common law or in equity, . . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars and . . . (b) is between citizens of different states, or (c) is between citizens of a state and foreign states, citizens or subjects, . . ."

[a] For Annotation of this § 24, Judicial Code, see footnote [b], ante, § 194.

Pt. § 51, Judicial Code,[b] *36 Stat. at L. 1101, Comp. St. 1911, p. 150, 1912 Supp F. S. A. v. 1, p. 153.* ". . . but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of the residence of either the plaintiff or the defendant."

It will be seen from the above quotations that in suits based on diversity of citizenship that (1) the matter in controversy must exceed, exclusive of interest and costs, the sum or value of three thousand dollars; (2) that the controversy must be between citizens of different states or between citizens of a state and foreign states, citizens, or subjects; and (3) that, where the fact that the action is between citizens of different states is the sole ground of jurisdiction, the action should be brought in the district of the residence of either the plaintiff or the defendant.

The existence of a Federal question in these cases is immaterial except as bearing on the question of venue, which in actions not local should be in the district of the residence of defendant where both grounds of jurisdiction exist.

Where there is a Federal question of such character that the amount in controversy is not material and the suit involves less than three thousand dollars, then the fact that there is a diversity of citizenship is immaterial because the amount in controversy will not support diversity of citizenship as a ground of Federal jurisdiction.

Where diversity of citizenship is a sole ground of jurisdiction, the existence of a proper diversity and a proper amount in controversy are jurisdictional, and cannot be waived. The matter of venue is not jurisdictional in the same sense, but may defeat the action if timely objection be made by the opposing party.

§ 231. What Is Citizenship. Citizenship is residence within a particular state with a bona fide intention that such residence shall be permanent. The residence and intention together con-

[b] For Annotation of this § 51, Judicial Code, see footnote [a], ante. § 161.

stitute what is known as domicil.[1] Accordingly the mere averment of residence, which may be transient or with the expectation of not remaining, is not the equivalent of the averment of citizenship for the purpose of supporting jurisdiction in the Federal court.[2]

This ruling has been held to be unaffected by the definition of citizenship as contained in the 14th Amendment of the Constitution of the United States, wherein it is declared that "all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.[3]

§ 232. Territorial and District of Columbia Citizens Are Not Included. The citizenship must be of that kind that identifies itself with a particular state. To be a citizen of the United States, and not of some state, is not enough.[4] Territorial and District of Columbia citizens are not citizens of a state, so as to base Federal jurisdiction on the ground of diverse citizenship.[5] Thus a citizen and resident of Indian territory against a citizen of a state [6] and an action between state citizens and citizens of Porto Rico do not present a diversity of citizenship.[7]

On the ground of diverse citizenship the citizen of a territory cannot sue a citizen of a state in the Federal courts and *vice versa*,[8]

[1] Butler v. Farnsworth, 4 Wash. 101, 4 Fed. Cas. No. 2,240; Morris v. Gilmer, 129 U. S. 315, 32 L. ed. 690, 9 Sup. Ct. Rep. 289; Mitchell v. United States, 21 Wall. 350, 22 L. ed. 584; Marks v. Marks, 75 Fed. 324; Doyle v. Clark, 1 Flipp. 536, 7 Fed. Cas. No. 4,053.

[2] Horne v. George H. Hammond Co. 155 U. S. 393, 39 L. ed. 197, 15 Sup. Ct. Rep. 167; Wolfe v. Insurance Co. 148 U. S. 389, 37 L. ed. 493, 13 Sup. Ct. Rep. 602; Menard v. Goggan, 121 U. S. 253, 30 L. ed. 914, 7 Sup. Ct. Rep. 873; Everhart v. Huntsville College, 120 U. S. 223, 30 L. ed. 623, 7 Sup. Ct. Rep. 555; Grace v. Insurance Co. 109 U. S. 278, 27 L. ed. 932, 3 Sup. Ct. Rep. 207; Brown v. Keene, 8 Pet. 112, 8 L. ed. 885; Turner v. Bank, 4 Dall. 8, 1 L. ed. 718.

[3] Marks v. Marks, 75 Fed. 324; Shaw v. Mining Co. 145 U. S. 444, 36 L. ed. 768, 12 Sup. Ct. Rep. 935; Anderson v. Watt, 138 U. S. 694, 34 L. ed. 1078, 11 Sup. Ct. Rep. 449.

[4] Prentiss v. Brennan, 2 Blatchf. 162, 19 Fed. Cas. No. 11,385.

[5] Johnson v. Bunker Hill Co. 46 Fed. 417; Hooe v. Jameson, 166 U. S. 395, 41 L. ed. 1049, 17 Sup. Ct. Rep. 596, and other cases cited in 4 F. S. A. p. 290.

[6] Kansas City S. R. Co. v. McGinty, 76 Ark. 356, 88 S. W. 1001.

[7] Healy v. McCormick, 157 Fed. 318.

[8] Johnson v. Bunker Hill, etc., 46 Fed. 417.

nor can a citizen of the District of Columbia sue a citizen of a state in the Federal courts.[9]

§ 233. States and Territories Are Not Citizens. "A state is not a citizen of any state, and, under the judiciary acts of the United States, it is firmly settled that a suit between a state and a citizen or corporation of another state is not between citizens of different states; and that in such cases the circuit courts (now district courts) of the United States have no jurisdiction of it unless it arises under the Constitution, laws, or treaties of the United States." [10]

The District of Columbia and the territories have been held not citizens so as to create diversity of citizenship.[11]

§ 234. Corporations. Corporations, though artificial persons, are treated for the purpose of determining diverse citizenship as citizens of the state under which they are created.[12]

A corporation does not become a citizen of another state than that of its incorporation by transacting business and having an office therein, or agreeing as a condition of being permitted to transact business in such other state that it may be sued therein.[13]

Where a corporation is incorporated in two states, it is a citizen of both states for jurisdictional purposes.[14]

Corporations of different states consolidated in each of the states is a citizen of each.[15]

[9] Seddon v. Virginia, etc., 36 Fed. 8, 1 L.R.A. 108; Hepburn v. Ellzey, 2 Cranch, 445, 2 L. ed. 332; New Orleans v. Winter, 1 Wheat. 91, 4 L. ed. 44.

[10] State of Indiana, etc., v. Alleghany Oil Co. 85 Fed. 870. See also Ames v. Kansas, 111 U. S. 449, 28 L. ed. 482, 4 Sup. Ct. Rep. 437; Germania Ins. Co. v. Wisconsin, 119 U. S. 473, 30 L. ed. 461, 7 Sup. Ct. Rep. 260; Postal Tel. Cable Co. v. Alabama, 155 U. S. 482, 39 L. ed. 231, 15 Sup. Ct. Rep. 192; State v. Tolleston Club, etc., 53 Fed. 18; Ayer, etc., Tie Co. v. Kentucky, 202 U. S. 409, 6 Ann. Cas. 205, 26 Sup. Ct. Rep. 679, 50 L. ed. 1082; O'Conor v. Texas, 202 U. S. 501, 26 Sup. Ct. Rep. 726, 50 L. ed. 1120; Southern R. Co. v. State, 165 Ind. 613, 75 N. E. 272; Darnell v. State, 174 Ind. 143, 90 N. E. 769; Ex parte Nebraska, 209 U. S. 436, 28 Sup. Ct. Rep. 581, 52 L. ed. 876.

[11] Johnson v. Bunker Hill, etc., 46 Fed. 417; Mexwell v. Federal Gold & Copper Co. 155 Fed. 110, 83 C. C. A. 570.

[12] Barrow Steamship Co. v. Kane, 170 U. S. 100, 42 L. ed. 964, 18 Sup. Ct. Rep. 526.

[13] Baltimore, etc., Co. v. Koontz, 104 U. S. 5, 26 L. ed. 643; St. Louis, etc., R. Co. v. Quigley, 21 How. 202, 16 L. ed. 73.

[14] Memphis, etc., R. Co. v. Alabama, 107 U. S. 581, 27 L. ed. 518, 2 Sup. Ct. Rep. 432.

[15] Baldwin v. Chicago, etc., R. Co. 86 Fed. 167.

A municipal corporation is a citizen of the state creating it the same as a private corporation.[16]

Because a corporation is a citizen of the state wherein it is incorporated, the allegation of citizenship may read:

> "_____ Company a corporation, organized and existing under the laws of the state of _____, with its principal place of business in the county of _____ _____ said state."

It has been held that the following statements were sufficient on which to base diverse citizenship:

> "Foreign corporation formed under and created by the laws of the state of New York." [17]
>
> "A corporation organized and domiciled in the state of New York." [18]
>
> "A body corporate by an act of the general assembly of Maryland." [19]
>
> "A body corporate in the state of Maryland incorporated by a law of the general assembly of Maryland." [20]
>
> "The Covington Drawbridge Company of Covington is a corporation of the state of Indiana." [21]
>
> "Organized under and pursuant to the laws of the state of New Jersey." [22]

The following averments were held insufficient:

> "A body politic in the law of and doing business in the state of California." [23]
>
> "A corporation duly established by law and having its principal place of business at Boston, in the state of Massachusetts." [24]
>
> "Doing business in the state of Iowa." [25]

Other illustrations will be found in 4 F. S. A. pp. 296, 297.

16 Ysleta v. Canada, 67 Fed. 6; Cowles v. Mercer Co. 7 Wall. 121, 19 L. ed. 87.

17 United States Express Co. v. Kountze, 8 Wall. 342, 19 L. ed. 457.

18 Ward v. Blake Mfg. Co. 56 Fed. 437, 5 C. C. A. 538.

19 Marshall v. Baltimore, etc., R. Co. 16 How. 314, 14 L. ed. 953.

20 Covington, etc., Co. v. Shepherd, 21 How. 112, 16 L. ed. 38; Philadelphia, etc., R. Co. v. Quigley, 21 How. 202, 16 L. ed. 73.

21 Covington Drawbridge Co. v. Shepherd, 21 How. 112, 16 L. ed. 38.

22 Block v. Standard Distilling Co. 95 Fed. 978.

23 Pennsylvania v. Quicksilver Co. 10 Wall. 553, 19 L. ed. 998.

24 New York, etc., Co. v. Hyde, 57 Fed. 188.

25 Brock v. North Western Fuel Co. 130 U. S. 342, 32 L. ed. 905, 9 Sup. Ct. Rep. 552.

A corporation organized under the laws of a foreign country is an alien.[26]

In Robertson v. Scottish Union etc., Insurance Company, 68 Fed. 173, the court held that the allegation in a petition for removal of a cause to a Federal court, that the defendant is "a company duly chartered and incorporated under the laws of Great Britain," is a sufficient statement of the citizenship of such defendant to give the Federal court jurisdiction. In Dunde Mortgage etc., Investment Co. v. School District, 21 Fed. 705, held that an allegation that plaintiff is a foreign corporation duly incorporated under the laws of Great Britain, in legal effect is the same as saying that it is a subject of Great Britain, and is sufficient.

§ 235. Joint Stock Companies. Joint stock companies partake both of the nature of partnerships and of corporations, and accordingly there has been a conflict of opinion as to whether the rule governing partnerships, or the rule governing corporations, should apply to these companies. It is now held that joint stock companies do not come under the rule governing corporations, but that the citizenship of the company depends upon the citizenship of the members.[27] An allegation that certain company was "a joint stock company organized under and by virtue of a law of the state of New York, and which said company is authorized by the laws of the state of New York to maintain and bring suits in the name of its president, for or on account of any right of action accruing to said company, and a citizen of the state of New York," was fatally defective in that it did not state that the company was a corporation.[28]

§ 236. Partnerships. A partnership is not a legal entity so as to have a citizenship of itself, but Federal jurisdiction of suits

[26] Railroad Co. v. Koontz, 104 U. S. 5, 26 L. ed. 643; Steamship Co. v. Tugman, 106 U. S. 118, 27 L. ed. 87.

[27] Thomas v. Ohio State University, 195 U. S. 211, 49 L. ed. 164, 25 Sup. Ct. Rep. 24; Saunders v. Adams Express Co. 136 Fed. 494.

[28] Chapman v. Barney, 129 U. S. 679, 32 L. ed. 800, 9 Sup. Ct. Rep. 426.

by or against partnerships and voluntary associations depend upon the citizenship of the members composing them.[29]

§ 237. National Banks.

Pt. subd. 16, § 24, Judicial Code,[c] *36 Stat. at L. 1091, Comp. St. 1911, p. 138, 1912 Supp. F. S. A. v. 1, p. 140.* ". . . and all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the state in which they are respectively located."

The above-quoted provision makes jurisdiction as to national banks, except when the United States or a Federal officer is a party, the same as any other corporation.[30]

§ 238. Married Women. The general rule is that the domicil of the husband is the domicil of the wife. But the rule does not apply when the wife is abandoned.[31] When an alien female marries a citizen, she becomes a citizen.[32]

§ 3, Act March 2, 1907, ch. 2534, 34 Stat. at L. 1228, Comp. St. 1911, p. 491, 1909 F. S. A. Supp. 69. "That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein."

[29] Adams v. May, 27 Fed. 908; Commonwealth v. Chicago R. Co. 48 Fed. 177; Sawyer v. Switzerland Marine Ins. Co. 14 Blatchf. 452, Fed. Cas. No. 12,408.

[30] First Nat. Bank v. Forrest, 40 Fed. 705; George v. Wallace, 135 Fed. 286, 68 C. C. A. 40; American Nat. Bank v. Tappan, 174 Fed. 431; Continental Nat. Bank v. Buford, 191 U. S. 123, 48 L. ed. 119, 24 Sup. Ct. Rep. 54, and other cases cited in 5 F. S. A. p. 195.

[31] Thompson v. Stalmann, 139 Fed. 93; Watertown v. Greaves, 56 L.R.A. 865, 112 Fed. 183, 50 C. C. A. 172.

[32] § 1994, R. S., 1 F. S. A. 786.

[c] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

§ 4, *Act March 2, 1907, ch. 2534, 34 Stat. at L. 1228, Comp. St. 1911, p. 491, 1909 F. S. A. Supp. 69.* "That any foreign woman who acquires American citizenship by marriage to an American shall be assumed to retain the same after the termination of the marital relation if she continue to reside in the United States, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens, or if she resides abroad she may retain her citizenship by registering as such before a United States consul within one year after the termination of such marital relation."

§ 239. Personal Representatives. "The test of jurisdictional authority is to be found in the citizenship of the parties who are actually before the court; and, if either of such parties sue or is sued in a representative capacity, his own citizenship, and not the citizenship of him whom he represents, is the determining factor." In a suit against the administrator, there must be diversity of citizenship between him and the complainant; and the fact that his decedent possessed the requisite citizenship at the time of the transactions giving rise to the suit, and at the time of his death, is immaterial.[33] It is not material in what state letters testamentary or of administration are granted.[34]

§ 240. Trustees. "If a trustee, by his citizenship, is qualified to sue in a Federal court, the citizenship of the beneficiary under the trust is wholly unimportant. If the trustee is disqualified by reason of citizenship in the same state as that of the necessary defendants, the suit cannot be entertained, even though the beneficiary might be qualified. The jurisdiction is to be determined, in all such instances, by the citizenship of the trustee. Neither is the rule changed by the refusal of the trustee to act. His refusal may authorize the beneficiary to exhibit a bill against the debtor to obtain a decree of a foreclosure. But, if the legal title to the property conveyed in trust be in the trustee, then the

[33] Bangs v. Loveridge, 60 Fed. 963; Dodges v. Perkins, Fed. Cas. No. 3,954, 4 Mason, 435; Susquehanna, etc., R. Co. v. Blatchford, 11 Wall. 172, 20 L. ed. 179.

[34] Brisenden v. Chamberlin, 53 Fed. 310; Hess v. Reynolds, 113 U. S. 76, 28 L. ed. 927, 5 Sup. Ct. Rep. 377.

court cannot grant any relief until the trustee was made a party defendant.[35]

But where the trustee is a naked trustee, and his sole duty is to hold the property until defeasance, with no power over it, and no right or duty to foreclose, the rule does not apply.[36] A non-resident *cestui que trust* may sue in the Federal court, when the trustee refuses to sue, by making the trustee a party defendant, where he is a resident of the same state as the other defendants.[37]

§ 241. Guardians. Where an infant sues or defends by a guardian or next friend, it has been held that the Federal jurisdiction depends on the citizenship of the infant.[38] The domicil of the infant is that of its parents; if the father is living, that of the father; if dead, that of the mother. Where the parents are divorced, the domicil will be governed by the domicil of the parent to whom the infant has been awarded.[39]

It has been held that when the law of the state of the forum gives the general guardian a right to sue in his own name as such guardian, he is to be treated as the party plaintiff so far as Federal jurisdiction is concerned.[40]

§ 242. Aliens. Aliens are citizens or subjects of foreign states, and the district courts are given jurisdiction, when the controversy is between a citizen or citizens of a state and a citizen or citizens and subjects of foreign state.[41] An alien may sue a citizen or a citizen may sue an alien.[42]

35 Shipp v. Williams, 62 Fed. 4, 10 C. C. A. 247; Gardner v. Brown, 21 Wall. 36, 22 L. ed. 527; McRea v. Bank, 19 How. 376, 15 L. ed. 688; Knapp v. Railroad Co. 20 Wall. 117, 22 L. ed. 328; Watson v. Asbury Park Co. 73 Fed. 1.

36 D. A. Tompkins Co. v. Catawba Mills et al. 82 Fed. 780.

37 Einstein v. Georgia S. V. R. Co. 120 Fed. 1009; Omaha Hotel Co. v. Wade, 97 U. S. 13, 24 L. ed. 917; Reinach v. Atlanta G. W. R. Co. 58 Fed. 38.

38 Woolridge v. McKanna, 8 Fed. 650. In re McClean, 26 Fed. 49; Wilcoxsen v. Chicago R. Co. 116 Fed. 444; Voss v. Neineber, 68 Fed. 947; Wiggins v. Bethune, 29 Fed. 51.

39 Marks v. Marks, 75 Fed. 325; Toledo Traction Company v. Cameron, 137 Fed. 49, 69 C. C. A. 28.

40 Mexican C. R. Co. v. Eckman, 187 U. S. 429, 23 Sup. Ct. Rep. 211, 47 L. ed. 245.

41 Prentiss v. Brennan, 2 Blatchf. 162, 19 Fed. Cas. No. 11,385.

42 Mossman v. Higginson, 4 Dall. 12, 1 L. ed. 720; Piquiqnot v. R. R. Co. 16 How. 104, 14 L. ed. 863; Sherwood v. Newport, etc., Co. 55 Fed. 5.

In this class of cases as in suits between citizens of different states, the citizenship of parties on one side of the controversy must be attached to a particular state or states with an alien on the other side.[43] The bare allegation that the opposing party is an alien is not sufficient. It must be alleged that he is a subject or citizen of some one foreign state.[44] Federal courts have no jurisdiction of suits between aliens where no Federal question is involved either alone or by joining citizens.[45]

A description of plaintiff as "a citizen of London, England," is not a sufficient averment that plaintiff is a citizen of Great Britain.[46]

The declaration may be amended to show that the plaintiff was an alien when the suit was commenced, instead of a citizen as alleged.[47]

§ 243. Indians. Indians are neither citizens nor aliens. An Indian residing within the United States is not "a foreign citizen or subject."[48] A member of an Indian tribe maintaining tribal relations is not a citizen of the United States, nor of the state of his residence, unless he has been naturalized in some manner.[49] A child deriving citizenship through its negro mother, though with an Indian father, is a citizen for the purpose of jurisdiction.[50]

§ 244. Term "Citizen" Collective. The word "citizen," as used in the statute, is used in a collective sense, and means all parties on one side of a suit. "While the designation of a party 'plaintiff' or 'defendant' was in the singular number, it was intended to embrace all persons who were on one side, however numerous, so that distinct interest must be represented by persons all

[43] Picquet v. Swan, 5 Mason, 35, 19 Fed. Cas. No. 11,134.
[44] Wilson v. City Bank, 3 Sumn. 422, 30 Fed. Cas. No. 17,597.
[45] Johnson v. Accident Ins. Co. of North America, 35 Fed. 876; Hodgson v. Bower Bank, 5 Cranch, 304, 3 L. ed. 108; Rateau v. Bernaurd, 3 Blatchf. 2444, 20 Fed. Cas. No. 11,579; Pooley v. Lueo, 72 Fed. 561.
[46] Stuart v. Easton, 156 U. S. 46, 39 L. ed. 341, 15 Sup. Ct. Rep. 268.
[47] Betzoldt v. American Ins. Co. 47 Fed. 705.
[48] Karrahoo v. Adams, 1 Dill. 344, 14 Fed. Cas. No. 7,614.
[49] Paul v. Chilsoquie, 70 Fed. 401.
[50] Alberty v. United States, 162 U. S. 499, 40 L. ed. 1051, 16 Sup. Ct. Rep. 864.

of whom were entitled to sue or were liable to be sued, in the Federal court.[51]

The reason for this is apparent when it is remembered that the original intent of making diverse citizenship a ground of Federal jurisdiction was to furnish an impartial tribunal for the determination of controversies between such parties. If a citizen of a state is opposed to a citizen of the same state, presumably justice would be given in the state court to its own citizens, and the joinder of nonresidents on one side or the other would not affect the case.

The Federal court's jurisdiction is limited, and if it cannot take jurisdiction of a case between citizens of the same state, the mere fact that there is diverse citizenship as to other parties would not confer jurisdiction. It must appear that every party on one side of the action is a citizen of a different state from every party on the other side.[52] If two causes of action are set out, diversity must appear in both.[53] The same rule applies in suits between citizens and aliens. All the necessary parties on one side must be citizens of a state and all on the other side must have citizenship otherwise.[54]

§ 245. Change of Domicil after Suit Commenced. A change of citizenship after the suit is commenced will have no effect on the jurisdiction of the court, where the parties were citizens of different states at the commencement of the suit.[55] Nor will an assignment of the cause of action after the suit is begun,

[51] Saginaw Gaslight Company v. City of Saginaw, 28 Fed. 529; Strawbridge v. Curtiss, 3 Cranch 267, 2 L. ed. 435; Coal Co. v. Blatchford, 11 Wall. 172, 20 L. ed. 179.

[52] Mexico C. R. Co. v. Pinkney, 149 U. S. 194, 13 Sup. Ct. Rep. 859, 37 L. ed. 699; Anderson v. Bassman, 140 Fed. 10, 11; Penn. Iron Co. v. Stone, 121 U. S. 633, 7 Sup. Ct. Rep. 1010, 30 L. ed. 1020.

[53] Howe & D. Co. v. Haugan, 140 Fed. 184–5; King v. Islander, 133 Fed. 416.

[54] Tracy v. Morel, 88 Fed. 801; Sawyer v. Switzerland Marine Co. Fed. Cas. No. 12,408, 14 Blatchf. 452; Ex parte Girard, 3 Wall. Jr. 265, Fed. Cas. No. 5,457.

[55] Pacific Mut. Life Ins. Co. v. Tompkins, 101 Fed. 539, 41 C. C. A. 488; Conally v. Taylor, 2 Pet. 556, 7 L. ed. 518; Anderson v. Watt, 138 U. S. 694, 11 Sup. Ct. Rep. 449, 34 L. ed. 1078; Morgan v. Morgan, 2 Wheat. 297, 4 L. ed. 244. See also cases cited 4 F. S. A. 292.

whereby the parties become citizens of the same state, affect the jurisdiction of the court once obtained.[56]

§ 246. Change of Citizenship or Transfer of Subject-Matter to Give Jurisdiction.[56a] If a citizen removes from one state to another in order to prosecute suits in the courts of the United States, provided the removal be real, the motive of the act cannot be inquired into.[57] But the change must be bona fide, and not merely ostensible.[58] A person who, residing in and transacting business in St. Louis, for the purpose of acquiring a residence for jurisdictional purposes crosses the river to East St. Louis, and there rents a room in which he sleeps at night while he continues to transact his business and also to take his meals in St. Louis, does not acquire a residence for jurisdictional purposes.[59]

Another mode of securing Federal jurisdiction is to transfer the subject of litigation or the cause of action, to a nonresident. The test in this case is the same as that applied in a change of residence, whether or not the transfer was made in good faith. The mere fact that the subject-matter of the suit has been transferred for the purpose of giving jurisdiction to the court will not defeat jurisdiction, provided there has been a bona fide sale and transfer, by which the transferee becomes the real owner and thereby the party to the suit.[60] But where it appears that a conveyance to plaintiff has been made without consideration for the sole purpose of making a case of diverse citizenship, the case will be dismissed on motion.[61] When all interest in the subject-matter is parted with upon good consideration, then the fact that the motive

[56] Anderson v. Watt, supra; Hardenbergh v. Ray, 151 U. S. 112, 38 L. ed. 93, 14 Sup. Ct. Rep. 305.

[56a] See our § 195 above as to jurisdiction by assignment.

[57] Briggs v. French, 2 Sumn. 251, 4 Fed. Cas. No. 1,871.

[58] Mitchell v. United States, 21 Wall. 352, 22 L. ed. 587.

[59] Kingman v. Holthaus, 59 Fed. 305.

[60] Manhattan L. Ins. Co. v. Broughton, 109 U. S. 125, 27 L. ed. 878, 3 Sup. Ct. Rep. 99; Colinson v. Jackson, 14 Fed. 309, 8 Sawy. 357; Hawley v. Kepp, 2 Flipp. 177, 11 Fed. Cas. No. 6,249; Briggs v. French, 2 Sumn. 251, 4 Fed. Cas. No. 1,871.

[61] Williams v. Nottawa, 104 U. S. 209, 26 L. ed. 719; Bernards T. P. v. Stebbins, 109 U. S. 341, 27 L. ed. 956, 3 Sup. Ct. Rep. 252; Greenwalt v. Tucker, 10 Fed. 884, 3 McCrary, 450; Maxweld v. Levy, 2 Dall. 381, 1 L. ed. 424, 4 Dall. 330, 11 L. ed. 854, 16 Fed. Cas. No. 9,321.

was to get Federal jurisdiction will not be considered.[62] But if at any time it appears that the parties to the suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under the act, the circuit court will proceed no further, but shall dismiss the suit or remand it to the court from which it was removed.[63]

§ 247. Shifting Parties to Create Diversity. It should appear in the bill that there is a diversity of citizenship to give jurisdiction, and prior to the act of March 3, 1875, this was sufficient, and their position on the bill was conclusive.[63a] But since 1875 the rule is that jurisdiction does not lawfully attach until all necessary parties are made parties. It is not in the discretion of the pleader to arrange parties in the suit so as to confer jurisdiction. They must be arranged according to their interests in the suit, and the court, when passing on the question of jurisdiction, will do this. It will look to the real facts of the case, as developed by the pleadings, and will disregard the artificial arrangement of the parties by the pleader, and ascertain from the pleadings where the real controversy lies, and arrange the parties accordingly. Parties cannot, by arranging themselves as plaintiffs or defendants in a cause, create a fictitious ground of Federal jurisdiction. This is denominated a joinder of parties to confer jurisdiction.[64] Where there are several defendants to a suit some of whom have the required diverse citizenship to support the bill, and some who have not, jurisdiction may be retained over the defendants as to whom diversity of citizenship exists, and a dismissal of the complaint may, and in the proper case will, be permitted against defendants who are not found to be within the jurisdiction of

62 Norton v. European & N. A. R. Co. 32 Fed. 865; Lake County v. Dudley, 173 U. S. 243, 43 L. ed. 684, 19 Sup. Ct. Rep. 398; Irvine Co. v. Bond, 74 Fed. 849; Alkire Grocery Co. v. Richesin, 91 Fed. 84; Ashley v. Presque Isle County, 54 U. S. App. 450, 83 Fed. 534, 27 C. C. A. 585; Board of Commissioners of Lake County v. Schradsky, 38 C. C. A. 17, 97 Fed. 2.

63 Fountain v. Town of Anzelica, 12 Fed. 8, 20 Blatchf. 448; Havees v. Contra Costa Water Co. 25 Alb. Law J. 146 (S. C. 11 Fed. 93, note); Barney v. Baltimore City, 6 Wall. 280, 18 L. ed. 825.

63a Bland v. Fleeman, 69 Fed. 672.

64 Bland v. Fleeman, 69 Fed. 672; Stephens v. Smartt, 172 Fed. 471.

the court, unless such defendants are indispensable to the entry of a decree against the remaining defendants, and when it may be done without prejudice.[65] When the parties are before the court the court will, for the purpose of ascertaining the jurisdiction, arrange them according to their actual interests, and place them on the side of the controversy to which they belong, and, if it then appears that the controversy is not between citizens of different states, the court is without jurisdiction.[66] If some of the parties plaintiff have "interests identical with some of the parties defendant, and the interest is not separable, you cannot separate them because they are citizens of different states to get jurisdiction by diversity." [67]

In Olst Colony Trust Co. v. Atlanta Ry. Co. 100 Fed. 798, which was a suit by a trust company against two railroad companies to enjoin the former company from enforcing a right which it said it had obtained by an ordinance of the city to condemn a certain portion of the track of the latter company. The latter company came into court by cross bill, and adopted all of the allegations of the bill of the trust company, and arranged itself by all pleadings on the side of the litigation with the trust company. The court said: "The pleadings put it on the side of the complainant necessarily; its interests are there very clearly; the whole countenance of the case puts the latter railway company on the same side with the trust company in this litigation. So, I think there can be no question here that it is not only the duty of the court, but it is its imperative

[65] Horn v. Lockhart, 17 Wall. 570, 21 L. ed. 657; Oxley Stave Co. v. Coopers' International Union of America, 72 Fed. 695; Mason v. Dullagham, 27 C. C. A. 296, 82 Fed. 689; Grove v. Grove, 93 Fed. 865; Smith v. Oil Co. 30 C. C. A. 103, 86 Fed. 359; Delaware, L. & W. R. Co. v. Frank, 110 Fed. 689.

[66] Martin v. Ellis, 9 Fed. 367; Covert v. Waldron, 33 Fed. 311; Rich v. Bray, 37 Fed. 273, 2 L.R.A. 225; Williams v. Nottawa, 104 U. S. 209, 26 L. ed. 719; Detroit City v. Dean, 106 U. S. 537, 27 L. ed. 300, 1 Sup. Ct. Rep. 560; Railway Co. v. Swan, 111 U. S. 379, 28 L. ed. 462, 4 Sup. Ct. Rep. 510; Cashman v. Canal Co. 118 U. S. 58, 30 L. ed. 72, 6 Sup. Ct. Rep. 926; Cilley v. Patten, 62 Fed. 498; Walster v. United States, 42 Fed. 892; Patten v. Cilley, 1 C. C. A. 522, 50 Fed. 337; In re Cilley, 58 Fed. 977.

[67] Carroll v. Chesapeake & O. Coal Agency Co. 61 C. C. A. 49, 124 Fed. 309; Mangeles v. Donau Brewing Co. 53 Fed. 513; Dawson v. Columbia Ave. Sav. Fund, etc., Co. 197 U. S. 178, 49 L. ed. 713, 25 Sup. Ct. Rep. 420; Joseph Dry Goods Co. v. Hecht, 57 C. C. A. 64, 120 Fed. 761; Venner v. Great Northern R. Co. 209 U. S. 24, 52 L. ed. 666, 28 Sup. Ct. Rep. 328; Gage v. Riverside Truck Co. 156 Fed. 1003.

duty, under the law, to put the latter railway company on the side with the complainant; and it being a citizen of Georgia, and the defendant railway company being a citizen of Georgia, necessarily the jurisdiction fails. It is well understood that this court, however, will not oust its own jurisdiction—will not defeat its own jurisdiction—unless it is met squarely with a state of facts which requires it; that is, where litigation is brought into court, the court will not seek to rid itself of hearing the case, if it finds that, by dispensing with certain parties, it can relieve the existing situation, and have only proper parties before the court on the question of diverse citizenship. The question then arises here, whether or not the latter railway company is an indispensable party to this litigation. If it is not, of course the court, under the rule and practice just suggested, would dismiss it from the litigation, and leave the case cognizable in the circuit court. Now, can this litigation be settled without the presence of the latter company? Will the court undertake to decree that A has a right against B at the instance of C, without having B before it? In my judgment, it is absolutely necessary to have the latter company before the court in order to determine and fully dispose of the issues presented in this case. In that view, there is but one course for the court to pursue, and that is to dismiss this litigation from the court for want of jurisdiction on account of the citizenship of the parties; and this without prejudice to the rights of the parties in the case."

Where a copartnership is sued one or more of the partners may be left out, when they are citizens of the same state as the plaintiff, so as to give the Federal courts jurisdiction.[68] But previous to this in Ruble v. Hyde, 1 McCrary, 513, 3 Fed. 331, it had been held that a copartner could not be left out to give jurisdiction to the Federal courts, and as this case was not mentioned in Smith v. Consumers' Cotton Oil Co. 86 Fed. 859, it would appear that it had been overlooked, or there would have been a different conclusion on a similar statement of facts.

[68] § 50, Judicial Code, our § 173, supra. Clearwater v. Meredith, 21 How. 489, 16 L. ed. 201; Inbusch v. Farwell, 1 Black, 566, 17 L. ed. 188; Smith v. Consumers' Cotton Oil Co. 86 Fed. 359, 30 C. C. A. 103; Barney v. Baltimore City, 6 Wall. 280, 18 L. ed. 825.

When a suit is brought in the name of a state on the relation of an individual, it is the citizenship and the residence of the individual that govern the jurisdiction of the circuit court.[69]

§ 248. Venue as Affecting Jurisdiction Based on Diverse Citizenship.

> *Pt. § 51, Judicial Code,*[d] *36 Stat. at L. 1101, Comp. St. 1911, p. 150, 1912 Supp. F. S. A. v. 1, p. 153.* ". . . Where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of the residence of either the plaintiff or the defendant."

By reason of the provision of the statute above quoted, a suit by a citizen of one state against a citizen of another state brought in a third state, would not lie, because the venue would be improperly laid and on timely objection the suit would be dismissed. But venue not being jurisdictional, the defect might be waived by the defendant's failure to object at the outset of the action.

This is a very different matter from that discussed in the preceding section. The following illustration will show the difference in the two classes of cases:

Supposing a citizen of California sued a citizen of Nevada together with a citizen of California in the Federal district court in Arizona. The fact that there was a California citizen on each side of the controversy would be fatal to setting up diverse citizenship as a ground of Federal jurisdiction, unless the suit against the California defendant could be dismissed. Assuming that this could be done, leaving the contest between the California and a Nevada citizen, there would be the requisite diversity of citizenship as a ground of Federal jurisdiction, and the Arizona Federal court would not be deprived of jurisdiction unless the Nevada defendant moved to dismiss for defect in venue.

§ 249. Issue of Citizenship—How Raised. The required diversity of citizenship must appear on the face of initial pleading

[69] Indiana v. Glover, 155 U. S. 513, 39 L. ed. 243, 15 Sup. Ct. Rep. 186; McNutt v. Bland, 2 How. 9, 11 L. ed. 159.

[d] For Annotation of this § 51, Judicial Code, see footnote [b], ante, our § 161.

on the part of the complainant, and if it does not appear the court will assume that it has no jurisdiction and dismiss the bill.[70] If the suit is in equity the matter is governed by the Equity Rule 29, providing for *a motion to dismiss* if the fact that there is not a proper diversity of citizenship appears on the face of the bill, or in the answer if it does not appear on the face of the bill.

If a *motion to dismiss* is filed it may be in the following form:

IN THE DISTRICT COURT OF THE U. S. FOR THE ..... DISTRICT OF ....., ... DIVISION.

John Doe,
Plaintiff,
vs.
Richard Roe,
Defendant,

MOTION TO DISMISS

And now comes Richard Roe, the defendant, in the above entitled action, and moves the court to dismiss this action and that he take his costs in this suit incurred, for that it appears by the pleadings filed, (or by the evidence taken), in the cause that ..... (naming party) is not a citizen of the State of ....., as alleged, and therefore no diversity of citizenship exists as alleged and upon which basis the court is alleged to have jurisdiction.

A. B.
Solicitor, etc.

It is a practice to be recommended, that the question of diversity of citizenship should be raised in the answer, before the case goes to trial. If it is not raised, the court will not infer a want of jurisdiction unless it affirmatively appears in the legitimate evidence taken on the main issues in the case. The court will not admit evidence on issues not raised in the pleadings. But if the issue is raised in the answer, all evidence tending to prove the issue will be admitted. If the answer raises the issue of diversity of citizenship, it may be substantially as follows:

70 Boston Safe-Deposit & Trust Co. v. City of Racine et al. 97 Fed. 817; Water Co. v. Babcock, 76 Fed. 243; First National Bank v. Radford Trust Co. 47 U. S. App. 692, 26 C. C. A. 1, 80 Fed. 569; Timmons v. Ely Town Land Co. 139 U. S. 378, 35 L. ed. 195, 11 Sup. Ct. Rep. 585; Horne v. George H. Hammond Co. 155 U. S. 394, 39 L. ed. 197, 15 Sup. Ct. Rep. 167.

IN THE DISTRICT COURT OF THE U. S. FOR THE ..... DISTRICT OF ....., ... DIVISION.

John Doe,
Plaintiff,
vs.
Richard Roe,
Defendant.

ANSWER

Comes now the defendant, Richard Roe, and answers plaintiff's bill of complaint, as follows, to wit:—

Denies that the plaintiff is now, or ever has been a citizen of the State of ..... (naming State) or that he is now, or ever has been an inhabitant of said State of ..... (naming State) or that he does now, or ever has resided therein. But defendant alleges that plaintiff is now, and at the commencement of this suit was, a citizen and resident of the State of ..... (naming State) of which State, that is, the State of ..... (naming State) the defendant Richard Roe is and was at the commencement of this action, a citizen and resident. (Then take up other defenses to the bill.)

Wherefore defendant prays the said plaintiff, John Doe, take nothing by his bill, that the said bill be dismissed, and that the defendant have his costs herein incurred.

A. B.
Solicitor.

If the action is at law the issue would be raised in the same manner as a question of jurisdiction in the state court in which that district court is situated. All defenses in an action at law are open to a defendant in the district court of the United States under any form of plea, answer, or demurrer, which would have been open to him under like pleading in the courts of the state within which the district court is held. This may be by general denial where the state law permits.[71] If the defense of no jurisdiction must be especially pleaded in the state court, it may be so pleaded in the Federal court, and testimony in reference to the citizenship of the parties is only admissible in support of allegations properly made in the pleadings.[72] If the issue is raised

[71] Chemung Canal Bank v. Lowery, 93 U. S. 72, 23 L. ed. 806; Oscanyan v. Winchester Repeating Arms Co. Fed. Cas. No. 10,600, 15 Blatchf. 79, 17 Am. Law Reg. (N. S.) 626, 13 Amer. Law Rev. 161, affirmed, Oscanyan v. Arms Co. 103 U. S. 261, 26 L. ed. 539; Lafayette Bridge Co. v. Streator, 105 Fed. 729; Theroux v. Northern Pac. R. Co. 64 Fed. 87, 12 C. C. A. 52; Johnston v. Klopsch, 88 Fed. 692; Celluloid Mfg. Co. v. American Zylonite Co. 34 Fed. 744; Frank v. Chetwood, 9 Rep. 6, 9 Fed. Cas. No. 5,051.

[72] Preferred Acc. Ins. Co. v. Barker, 93 Fed. 158, 35 C. C. A. 250.

by demurrer in the state court, the same rule applies in the district court.[73]

§ 250. When Want of Diversity Appears on the Trial. It may happen that the want of the required citizenship, when it does not appear in the pleadings, and is not raised in the answer, will appear on the trial of the case. If it should appear thus, it is the duty of the court *sua sponte* to dismiss the case without either motion or suggestion. But the defendant may take the initiative by filing a motion.[74]

> § *37, Judicial Code, 1912 Supp. F. S. A. v. 1, p. 150.* "If, in any suit commenced in a district court, or removed from a state court to a district court of the United States, it shall appear to the satisfaction of said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said district court shall proceed no further therein, but shall dismiss the suit, or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just."

Thus, the court must dismiss the case at once if it appears at any time during the progress of the case that it is without jurisdiction.[75] When the issue is raised it may be tried by the judge or submitted to a jury.[76]

[73] Chemung Canal Bank v. Lowery, 93 U. S. 76, 23 L. ed. 806. See also Kent v. Bay State Gas. Co. 93 Fed. 887.

[74] Williams v. Nottawa, 104 U. S. 212, 26 L. ed. 720; Farmington v. Pillsbury, 114 U. S. 144, 29 L. ed. 114, 5 Sup. Ct. Rep. 807; Little v. Giles, 118 U. S. 603, 604, 30 L. ed. 269, 7 Sup. Ct. Rep. 32; Hartog v. Memory, 116 U. S. 588, 29 L. ed. 725, 6 Sup. Ct. Rep. 521; Morris v. Gilmer, 129 U. S. 315, 32 L. ed. 690, 9 Sup. Ct. Rep. 289.

[75] Turner v. Farmers' Loan & T. Co. 106 U. S. 555, 27 L. ed. 274, 1 Sup. Ct. Rep. 519; King Bridge Co. v. Otoe County, 120 U. S. 226, 30 L. ed. 624, 7 Sup. Ct. Rep. 552.

[76] Wetmore v. Rymer, 169 U. S. 115, 42 L. ed. 684, 18 Sup. Ct. Rep. 293; Canadian Pac. R. Co. v. Wenham, 146 Fed. 206, 207.

CHAPTER 9.

AMOUNT IN CONTROVERSY.

Sec.
260. In General.
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267. Effect of Valid Set-Off or Payment.
268. Aggregating Amounts to Create Jurisdiction.
269. Amendment to Show.
270. State Statutes Do Not Control as to Splitting Demands.
271. Raising Issue as to Amount or Good Faith.

§ 260. In General. The Federal statutes have made the sum or value of the matter in controversy an essential element of a large number of cases of which the district courts have jurisdiction both originally and on removal.

The matter in controversy must exceed, exclusive of interest and costs, the sum or value of $3,000 in cases brought in the Federal court originally or on removal, and whether the action be based on the ground of diverse citizenship or a Federal question, but with certain exceptions in the latter class of cases. Cases in which the amount in controversy is material are specifically enumerated in § 261 following.

The amount in controversy is not material in suits brought by the United States.[1] The amount is not material in suits be-

[1] United States v. Sayward, 160 U. S. 493, 40 L. ed. 508, 16 Sup. Ct. Rep. 371; United States v. Reid, 90 Fed. 522; United States v. Flourney Live Stock, etc., Co. 71 Fed. 576; United States v. Kentucky River Mills, 45 Fed. 273; United States v. Shaw, 39 Fed. 433, 3 L.R.A. 232.

tween citizens of the same state claiming under land grants from different states in cases originally brought in the Federal court,[2] but is material on removal under § 30, Judicial Code.[3] The amount is not material in cases of which the Federal courts have exclusive jurisdiction and in other cases especially excepted in paragraphs 2 to 25 of § 24, Judicial Code. The provisions of § 24, Judicial Code, setting out the cases in which the amount in controversy is not material, are quoted in § 263 hereafter, and the subject under the several jurisdictional heads is also treated in detail under chapter 12, hereafter, entitled, "Summaries—Original Jurisdiction, Removal, Amount, Venue for the Several Matters of the District Court Cognizance." The present chapter gives some suggestions as to what is meant by the sum or value of the matter in controversy and as to the pleading and determination of the issue of "amount in controversy."

§ 261. When Amount in Controversy Is Material.

§ 24, Judicial Code,[a] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 139.* "The district court shall have original jurisdiction as follows: First. Of all suits of a civil nature, at common law or in equity, . . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (a) arises under the Constitution or laws of the United States or treaties made, or which shall be made, under their authority, or (b) is between citizens of different states, or (c) is between citizens of state and foreign states, citizens or subjects. . . . *Provided, however,* That the foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section. . . ."

§ 28, Judicial Code,[b] *36 Stat. at L. 1094, Comp. St. 1911, p. 140, 1912 Supp. F. S. A. v. 1, p. 144.* "Any suit of a civil nature, at law or in equity, arising under the Constitution, or laws of the United States, or treaties made, or which shall

[2] United States v. Sayward, 160 U. S. 493, 40 L. ed. 508, 16 Sup. Ct. Rep. 371.

[3] § 262, infra.

[a] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

[b] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.

be made, under their authority, of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought, in any state court, may be removed. . . . Any other suit of a civil nature, at law or in equity, of which the district courts of the United States are given jurisdiction by this title, and which are now pending on which may hereafter be brought, in any state court, may be removed. . . ." See Amendment Jan. 20, 1914, quoted § 299, post.

§ 262. Same—Removal of Land Grant Cases.

§ *30, Judicial Code,*[c] *36 Stat. at L. 1096, Comp. St 1911, p. 142, 1912 Supp. F. S. A. v. 1, p. 146.* "If in any action commenced in a state court the title of land be concerned, and the parties are citizens of the same state and the matter in dispute exceeds the sum or value of three thousand dollars, exclusive of interest and costs, the sum or value being made to appear, one or more of the plaintiffs or defendants, before the trial, may state to the court, and make affidavit if the court require it, that he or they claim, and shall rely upon, a right or title to the land under a grant from a state, and produce the original grant, or an exemplification of it, except where the loss of public records shall put it out of his or their power, and shall move that any one or more of the adverse party inform the court whether he or they claim a right or title to the land under a grant from some other state, the party or parties so required shall give such information, or otherwise not be allowed to plead such grant or give it in evidence upon the trial. If he or they inform the court that he or they do claim under such grant, any one or more of the party moving for such information may then, on petition and bond, as hereinbefore mentioned in this chapter, remove the cause for trial to the district court of the United States next to be holden in such district; and any one of either party removing the cause shall not be allowed to plead or give evidence of any other title than that by him or them stated as aforesaid as the ground of his or their claim."

[c] Re-enacting part of R. S. § 647, Foster's Fed. Prac. (4th ed.) p. 1457, Comp. St. 1901, p. 524, 4 F. S. A. 265, amended by 25 Stat. at L. 435, Comp. St. 1901, p. 510, 4 F. S. A. 386, which is repealed by § 297, Judicial Code.

This act substitutes $3,000 for $2,000 as the jurisdictional amount, and substitutes the words "district court" for the words "circuit court." Pawlet v. Clark, 9 Cranch, 292, 3 L. ed. 735. In general, Stevenson v. Fain, 195 U. S. 165, 49 L. ed. 142, 25 Sup. Ct. Rep. 6.

§ 263. When the Amount in Controversy Is Not Material.

Pt. § 24, Judicial Code,[d] *36 Stat. at L. 1091, Comp. St. 1911, pp. 135–139, 1912 Supp. F. S. A. v. 1, p. 139.* "The district courts shall have original jurisdiction as follows:

"First. Of all suits of a civil nature at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, . . . provision as to the sum or value of the matter in controversy, shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section.

"Second. (Of crimes and offenses.) Of all crimes and offenses cognizable under the authority of the United States.

"Third. (Of admiralty causes, seizures and prizes.) Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common law remedy where the common law is competent to give it; of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize.

"Fourth. (Of suits under any law relating to the slave trade.) Of all suits arising under any law relating to the slave trade.

"Fifth. (Of cases under internal revenue, customs, and tonnage laws.) Of all cases arising under any law providing for internal revenue, or from revenue from imports or tonnage, except those cases arising under any law providing revenue from imports, jurisdiction of which has been conferred upon the court of customs appeals.

"Sixth. (Of suits under postal laws.) Of all cases arising under the postal laws.

"Seventh. (Of suits under the patent, the copyright, and the trademark laws.) Of all suits, at law or in equity, arising under the patent, the copyright, and the trademark laws.

"Eighth. (Of suits for violation of interstate commerce laws.) Of all suits and proceedings arising under any law regulating commerce, except those suits and proceedings exclusive jurisdiction of which has been conferred upon the commerce court. (Commerce court now abolished. See ch. 9, Judicial Code, in our Appendix. But see amendment, § 28, Judicial Code, quoted § 299, post.)

"Ninth. (Of penalties and forfeitures.) Of all suits and

[d] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

proceedings for the enforcement of penalties and forfeitures incurred under any law of the United States.

"Tenth. (Of suits on debentures.) Of all suits by the assignee of any debenture for drawback of duties issued under any law for the collection of duties, against the person to whom such debenture was originally granted, or against any indorser thereof, to recover the amount of such debenture.

"Eleventh. (Of suits for injuries on account of acts done under laws of the United States.) Of all suits brought by any person to recover damages for any injury to his person or property on account of any act done by him under any law of the United States, for the protection or collection of any of the revenues thereof, or to enforce the right of citizens of the United States to vote in the several states.

"Twelfth. (Of suits concerning civil rights.) Of all suits authorized by law to be brought by any person for the recovery of damages on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section nineteen hundred and eighty, Revised Statutes.

"Thirteenth. (Of suits against persons having knowledge of conspiracy, etc.) Of all suits authorized by law to be brought against any person who, having knowledge that any of the wrongs mentioned in section nineteen hundred and eighty, Revised Statutes, are about to be done, and having power to prevent or aid in preventing the same, neglects or refuses so to do, to recover damages for any such wrongful act.

"Fourteenth. (Of suits to redress the deprivation, under color of law, of civil rights.) Of all suits, at law or in equity, authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any state, of any right, privilege, or immunity secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States.

"Fifteenth. (Of suits to recover certain offices.) Of all suits to recover possession of any office, except that of elector of President or Vice President, Representative in or delegate to Congress, or member of a state legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of

the right to vote to any citizen offering to vote, on account of race, color, or previous condition of servitude: *Provided,* That such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Constitution of the United States, and secured by any law, to enforce the right of citizens of the United States to vote in all the states.

"Sixteenth. (Of suits against national banking associations.) Of all cases commenced by the United States, or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title 'National Banks,' Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed and all suits in equity, be deemed citizens of the states in which they are respectively located.

"Seventeenth. (Of suits by aliens for torts.) Of all suits brought by any alien for a tort only, in violation of the laws of nations or of a treaty of the United States.

"Eighteenth. (Of suits against consuls and vice consuls.) Of all suits against consuls and vice consuls.

"Nineteenth. (Of suits and proceedings in bankruptcy.) Of all matters and proceedings in bankruptcy.

"Twentieth. (Of suits against the United States.) Concurrent with the court of claims, of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable, and of all set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the government of the United States against any claimant against the government in said court: *Provided, however,* That nothing in this paragraph shall be construed as giving to either the district courts or the court

of claims jurisdiction to hear and determine claims growing out of the late Civil War, and commonly known as 'war claims,' or to hear and determine other claims which had been rejected or reported on adversely prior to the third day of March, eighteen hundred and eighty-seven, by any court, department, or commission authorized to hear and determine the same, or to hear and determine claims for pensions; or as giving to the district courts jurisdiction of cases brought to recover fees, salary, or compensation for official services of officers of the United States, or brought for such purpose by persons claiming as such officers or as assignees or legal representatives thereof; but no suit pending on the twenty-seventh day of June, eighteen hundred and ninety-eight, shall abate or be affected by this provision: *And provided further,* That no suit against the government of the United States shall be allowed under this paragraph unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided,* That the claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the suit be brought within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively. All suits brought and tried under the provisions of this paragraph shall be tried by the court without a jury.

"Twenty-first. (Of suits for the unlawful inclosure of public lands.) Of proceedings in equity, by writ of injunction, to restrain violations of the provisions of laws of the United States to prevent the unlawful inclosure of public lands; and it shall be sufficient to give the court jurisdiction if service of original process be had in any civil proceeding on any agent or employee having charge or control of the inclosure.

"Twenty-second. (Of suits under immigration and contract labor laws.) Of all suits and proceedings arising under any law regulating the immigration of aliens or under the contract labor laws.

"Twenty-third. (Of suits against trusts, monopolies, and unlawful combinations.) Of all suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies.

"Twenty-fourth. (Of suits concerning allotments of land to Indians.) Of all actions, suits, or proceedings involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty. And the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him; but this provision shall not apply to any lands now or heretofore held by either of the Five Civilized Tribes, the Osage Nation of Indians, nor to any of the lands within the Quapaw Indian Agency: *Provided,* That the right of appeal shall be allowed to either party as in other cases.

"Twenty-fifth. (Of partition suits where United States is joint tenant.) Of suits in equity brought by any tenant in common or joint tenant for the partition of lands in cases where the United States is one of such tenants in common or joint tenants, such suits to be brought in the district in which such land is situate."

§ 264. What Is "Amount in Controversy." The statutes and decisions use the terms interchangeably, "amount in controversy," "matter in dispute," "amount in dispute."

By such terms are meant either the amount sued for in good faith or the value of the property or right involved, depending upon the nature of the case.

Generally speaking, when there is a definite amount that can be determined as being in dispute between the parties, this will fix the jurisdiction. But where a particular matter of itself less than the jurisdictional amount or value involves a right or estate as the subject of the dispute, which right or estate depends upon the determination of the controversy, the value of the right or estate will fix the jurisdiction.

Thus, the specific amount or value involved governs in a suit to enjoin an illegal property tax, the amount of the tax;[4] or to remove as a cloud on title a claim for a specified amount[5] or enforce

[4] Douglas Co. v. Stone, 191 U. S. 557, 48 L. ed. 301, 24 Sup. Ct. Rep. 843; Turner v. Jackson Lumber Co. 159 Fed. 926, 87 C. C. A. 106; Purnell v. Page, 128 Fed. 496.

[5] Cooper v. Preston, 105 Fed. 403.

a lien,[6] or partition of a specified interest,[7] or to obtain specific performance of contract.[8]

But there are many cases where a specific amount or value does not measure the amount or value of the matter in controversy, but the value of the object to be obtained and right to be protected, controls. For instance, the maintenance of a schedule rate,[9] preventing the establishment of a new schedule,[10] the property right of board of trade in its market quotations;[11] prevention of ticket scalping;[12] enforcement of a joint interest in a fund as on the dissolution of a partnership or corporation,[13] suit to quiet title or to remove cloud from title, where the value of the land is generally the determining element.[14]

If the matter in controversy has no pecuniary measure, the Federal courts can take no jurisdiction, as in habeas corpus proceedings by a father to obtain possession of his infant child,[15] or an action for divorce, alimony being within the discretion of the court.[16]

§ 265. Amount Stated in Declaration or Bill Controls Unless Pleaded Erroneously or in Bad Faith. If the sum demanded is so manifestly fictitious as to make it legally certain that the amount alleged was only to get jurisdiction and is not the real amount in controversy, the court will dismiss.[17] The

[6] Stillwell & Bierce & S. V. Co. v. Williamson Oil & Fertilizer Co. 80 Fed. 68.

[7] Rich v. Bray, 37 Fed. 276, 2 L.R.A. 225.

[8] Johnston v. Trippe, 33 Fed. 530.

[9] Texas & P. R. Co. v. Kuteman, 54 Fed. 547, 4 C. C. A. 503, 13 U. S. App. 99.

[10] Northern P. R. Co. v. Pacific Coast, etc. Asso. 165 Fed. 2, 91 C. C. A. 39; Chesapeake & D. Canal Co. v. Gring, 159 Fed. 662, 86 C. C. A. 530; Southern P. Co. v. Bartine, 170 Fed. 725.

[11] Board of Trade v. Cella Commission Co. 145 Fed. 28, 76 C. C. A. 28; John D. Park & Sons Co. v. Hartman, 153 Fed. 24, 82 C. C. A. 158, 12 L.R.A. (N.S.) 135.

[12] Nashville, C. & St. R. R. Co. v. McConnell, 82 Fed. 65; Delaware, L. & W. R. Co. v. Frank, 110 Fed. 689.

[13] Kent v. Honsinger, 167 Fed. 620; Taylor v. Decatur Mineral & Land Co. 112 Fed. 449.

[14] Holland v. Challan, 110 U. S. 15, 28 L. ed. 52, 3 Sup. Ct. Rep. 594; Smith v. Adams, 130 U. S. 167, 32 L. ed. 895, 9 Sup. Ct. Rep. 566.

[15] Ex parte Everts, 1 Bond, 197, 8 Fed. Cas. No. 4,581, 7 Amer. Law Reg. 79.

[16] Bowman v. Bowman, 30 Fed. 849.

[17] Jones v. McCormick Harvester Machine Co. 82 Fed. 295, 27 C. C. A. 133, 53 U. S. App. 408; Battle v. Alkinson, 115 Fed. 384.

same is true where it appears from the nature of the case stated in the pleadings that there could not legally be a judgment for an amount necessary to the jurisdiction. Thus, where a demand for one thousand dollars was alleged to be the value of certain property, and in addition ten thousand dollars damages was claimed, the court reached the conclusion that the claim for damages could not be sustained as a matter of law, and the suit was dismissed.[18]

§ 266. Amount in Controversy Includes What. The statute says, "Exclusive of interest and costs." Hence, items of expense in connection with a cause of action cannot be included unless the contract sued on covers same.[19] Attorneys' fees may be added when a part of the contract.[20] But where a statute makes attorneys' fees a part of the costs, they may not be considered.[21] A suit on a bond and *matured* interest coupons which are no longer a mere incident of the principal indebtedness but have become a principal obligation, will give the jurisdictional amount.[22]

§ 267. Effect of Valid Set-Off or Payment. A party, in alleging the amount of his claim, is presumed to know of any payments made on the claim or valid set-offs existing against it, and hence if such payment or set-off appears from the record undisputed the court will not have jurisdiction.[23] But if the payment or set-off is disputed the mere pleading thereof will not defeat the claim, because, as the court says, "who can say in advance that the defense will be insisted on, or, if presented, would be sustained by the court?" [24]

§ 268. Aggregating Amounts to Create Jurisdiction. If the claims are joint claims, they may be aggregated to create

[18] Vance v. Vandercook Co. 170 U. S. 468, 42 L. ed. 1111, 18 Sup. Ct. Rep. 645.
[19] Less v. English, 85 Fed. 471, 29 C. C. A. 275, 56 U. S. App. 16.
[20] Rogers v. Riley, 80 Fed. 762; Swofford v. Cornucopia Mines, 140 Fed. 958.
[21] Peters v. Queen Ins. Co. 182 Fed. 113.
[22] Edwards v. Bates Co. 163 U. S. 269, 41 L. ed. 155, 16 Sup. Ct. Rep. 967.
[23] Bedford Quarries Co. v. Welch, 100 Fed. 513.
[24] Schunk v. Moline M. & S. Co. 147 U. S. 500, 37 L. ed. 255, 13 Sup. Ct. Rep. 416.

the jurisdictional amount,[25] but not if they are separable.[26] So, also, an assignee of several claims against single defendant may sue in the Federal court, provided the several assignors had the requisite diversity of citizenship necessary to confer jurisdiction. This is so even though the claim of each assignor was less than the jurisdictional amount.[27]

§ 269. Amendment to Show. Amendments are permitted to show jurisdictional allegations, and this is true of the allegations as to the amount in controversy when the facts warrant such an amendment.[28]

§ 270. State Statutes Do Not Control as to Splitting Demands. The general rule that the Federal court will not follow the state laws and decisions in matters which affect their jurisdiction applies to a state statute requiring demands to be split up into separate suits, which would defeat the jurisdiction of the court by reducing the demand below the jurisdictional amount.[29]

§ 271. Raising Issue as to Amount or Good Faith. The issue as to the amount in controversy, when it appears from the face of the record as a matter of law that the proper amount is not involved, may be raised in equity suits under Equity Rule 29, by a motion to dismiss or in the answer, and at law by demurrer or other appropriate pleading authorized by state statutes. Where such defect does not appear from the face of the record, the objection should be made under Equity Rule 29 in the answer when it may be separately heard. In an action at law objection would be by a plea or other appropriate pleading under the state practice.

[25] Holt v. Bergevin, 60 Fed. 2.
[26] Jones v. Mutual Fidelity Co. 123 Fed. 510.
[27] Bowden v. Burnham, 59 Fed. 752, 8 C. C. A. 248; Bernheim v. Birnbaum, 30 Fed. 885; Davis v. Mills, 99 Fed. 39.
[28] Bowden v. Durnham, 59 Fed. 754, 8 C. C. A. 249, 19 U. S. App. 448.
[29] O'Connell v. Reed, 56 Fed. 531, 5 C. C. A. 586; Texas, etc., R. Co. v. Gentry, 163 U. S. 353, 41 L. ed. 186, 16 Sup. Ct. Rep. 1104.

Raising the issue of "amount" as a matter of law, the following allegation is suggested:

"Defendant alleges that it appears on the face of the bill of complaint that this case does not really and substantially involve a dispute or controversy properly within the jurisdiction of the court, in that the matter in controversy, as appears from the bill of complaint, does not exceed the sum or value of three thousand dollars exclusive of interest and costs."

If the issue is as to good faith, the following allegation may be used:

"That this suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of this court in that the amount sued for as alleged in the complaint is not truly stated and is not alleged in good faith, and defendant alleges that the matter in controversy does not exceed the sum or value of three thousand exclusive of interest and costs."

CHAPTER 10.

REMOVAL OF CAUSES—JURISDICTION AND PROCEDURE.

Sec.

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308. Proofs of Records When Copies Refused by State Court Clerks.
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311. Provisional Remedies of State Court Preserved—Bonds Given in State Suit—Valid on Removal.
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§ 285. In General. There are eight classes of cases in which there may be a removal from the state to the Federal court.

Cases arising under the employers' liability act are specifically denied removal in the closing paragraph, § 28, Judicial Code, quoted in § 299, following.

Class one includes cases involving a Federal question. These may be removed by the defendant or defendants therein without regard to his or their residence.[1]

Class two includes cases based on diverse citizenship. These may be removed by a nonresident defendant or defendants.[2]

Class three includes separable controversies between citizens of different states of either classes one or two. Thus any defendant with a separable controversy based on a Federal question, or any nonresident defendant relying on diverse citizenship and with a separable controversy, may remove.[3]

The procedure is the same for classes one, two, and three.[4]

Class four includes cases between a citizen of a state and a citizen of another state, where such nonresident defendant may remove on the ground of prejudice or local influence.[5] The time for removal[6] and procedure in this class of cases differs from that in the first three classes of cases.[7]

All four classes of cases may be remanded to the state court if improperly removed, either under § 28[8] or § 37,[9] Judicial Code.

Class five includes cases between citizens of the same state claiming under land grants from different states. These are removable by either party under § 30, Judicial Code, and must involve $3,000 exclusive of interest and costs, although such amount is not required to give the Federal court original jurisdiction.[10]

Class six includes cases removable by defendant nonresident civil officers in suits brought against them by aliens under § 34, Judicial Code.[11]

Class seven includes cases arising under the civil rights laws.

1 § 287, infra.
2 § 288, infra.
3 § 289, infra.
4 §§ 290–1–2–3–4, infra.
5 § 295, infra.
6 Ibid.
7 §§ 295–296, infra.
8 § 298, infra.
9 § 310, infra.
10 § 300, infra.
11 § 301, infra.

These are removable by a defendant denied such civil rights under § 31, Judicial Code.[12]

Class eight includes cases against revenue or congressional officers. These cases may be removed by them at any time before trial.[13]

There are general provisions respecting proofs of state court records where copies are refused by the clerks of such court;[14] for enforcing the return of the record from the state court;[15] for preserving on removal attachment and sequestration liens, injunctional orders, bonds and undertakings,[16] and for proceedings after removal.[17] Remanding cases fraudulently or improperly removed, lacking jurisdictional grounds, may be done under § 37, Judicial Code.[18]

The changes made in the practice by the Judicial Code are very few. It is now required under § 29, Judicial Code, what before was the general practice, that the petition for removal be verified.[19] The bond for removal is now conditioned to enter in the district court "within thirty days from the date of filing said petition, a certified copy of the record, etc.,"[20] where formerly the condition was to enter suit "on or before the first day of the next regular session." The old practice of giving notice is now obligatory under § 29, Judicial Code, requiring "written notice of said petition and bond" prior to filing same.[21]

The forms given in this chapter are adapted from Desty's Federal Procedure.

§ 286. Jurisdiction—First Four Classes of Removal Cases.

§ 28, Judicial Code,[a] *36 Stat. at L. 1094, Comp. St. 1911, pp. 140, 141, 1912 Supp. F. S. A. v. 1, pp. 144–5.* "(Removal of suits from state to United States district courts.) Any suit of a civil nature, at law or in equity, arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which

[12] § 302, infra. [13] § 304, infra. [14] § 308, infra. [15] § 309, infra.
[16] § 311, infra. [17] § 312, infra. [18] § 310, infra. [19] § 290, infra.
[20] § 291, infra. [21] § 293, infra.

[a] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.

may hereafter be brought, in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district. Any other suit of a civil nature, at law or in equity, of which the district courts of the United States are given jurisdiction by this title, and which are now pending or which may hereafter be brought, in any state court, may be removed into the district court of the United States for the proper district by the defendant or defendants therein, being nonresidents of that state. And when, in any suit mentioned in this section, there shall be a controversy which is wholly between citizens of different states, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the district court of the United States for the proper district. And where a suit is now pending, or may hereafter be brought, in any state court, in which there is a controversy between a citizen of the state in which the suit is brought and a citizen of another state, any defendant, being such citizen of another state, may remove such suit into the district court of the United States for the proper district, at any time before the trial thereof, when it shall be made to appear to said district court that, from prejudice or local influence, he will not be able to obtain justice in such state court, or in any other state court to which the said defendant may, under the laws of the state, have the right, on account of such prejudice or local influence, to remove said cause: *Provided,* That if it further appear that said suit can be fully and justly determined as to the other defendants in the state court, without being affected by such prejudice or local influence, and that no party to the suit will be prejudiced by a separation of the parties, said district court may direct the suit to be remanded, so far as relates to such other defendants, to the state court, to be proceeded with therein. At any time before the trial of any suit which is now pending in any district court, or may hereafter be entered therein, and which has been removed to said court from a state court on the affidavit of any party plaintiff that he had reason to believe and did believe that, from prejudice or local influence, he was unable to obtain justice in said state court, the district court shall, on application of the other party, examine into the truth of said affidavit and the grounds thereof, and, unless it shall appear to the satisfaction of said court that said party will not be able to obtain justice in

said state court, it shall cause the same to be remanded thereto. Whenever any cause shall be removed from any state court into any district court of the United States, and the district court shall decide that the cause was improperly removed, and order the same to be remanded to the state court from whence it came, such remand shall be immediately carried into execution, and no appeal or writ of error from the decision of the district court so remanding such cause shall be allowed: *Provided,* That no case arising under an act entitled, "An Act Relating to the Liability of Common Carriers by Railroad to Their Employees in Certain Cases," approved April twenty-second, nineteen hundred and eight, or any amendment thereto, and brought in any state court of competent jurisdiction, shall be removed to any court of the United States."

§ 287. Class One; Removal by Defendant or Defendants on Ground of Federal Question.

Cl. 1, § 28, Judicial Code,[b] (above quoted in full) *36 Stat. at L. 1094, Comp. St. 1911, p. 140, 1912 Supp. F. S. A. v. 1, p. 144.* "Any suit of a civil nature, at law or in equity, arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought, in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district."

§ 288. Class Two; Removal by Nonresident Defendant or Defendants on Ground of Diverse Citizenship.

Cl. 2, § 28, Judicial Code,[c] *36 Stat. at L. 1094, Comp. St. 1911, pp. 140, 141, 1912 Supp. F. S. A. v. 1, p. 144.* ". . . Any other suit of a civil nature, at law or in equity, of which the district courts of the United States are given jurisdiction by this title, and which are now pending or which may hereafter be brought, in any state court, may be removed into the district court of the United States for the proper district by the defendant or defendants therein, being nonresidents of that state. . . ."

[b] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.
[c] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.

§ 289. Class Three; Removal of a Separable Controversy Wholly between Citizens of Different States. Any defendant or defendants with a separable controversy wholly between citizens of different states may remove same from the state to the Federal court, in cases of which the district court might have taken jurisdiction originally on the ground of a Federal question. Likewise any nonresident defendant or defendants may remove his or their separable controversies where the district courts might have taken jurisdiction originally on account of diverse citizenship. (Aliens may not remove a separable controversy.) Both classes of cases are included in the following statutory provision:

> *Cl. 3, § 28, Judicial Code,*[d] *36 Stat. at L. 1094, Comp. St. 1911, p. 141, 1912 Supp. F. S. A, v. 1, p. 144.* ". . . And when in any suit mentioned in this section there shall be a controversy which is wholly between citizens of different states, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the district court of the United States for the proper district. . . ."

To constitute a separable controversy, the case must be one capable of separation into parts, so that in one of the parts a controversy will be presented with citizens of one or more states, on one side, and citizens of other states, on the other, which can be fully determined without the presence of the other parties to the suit as it has been begun.[22] It must appear from the record that, upon the allegation of plaintiff's petition, there arises in the cause a controversy capable of separation from the other issues or questions presented by the petition, which, when separated, would be between citizens of different states.[23] When the cause of action is single, the fact that different defendants have dif-

[22] Fraser v. Jennison, 106 U. S. 191, 27 L. ed. 131, 1 Sup. Ct. Rep. 171; Ayers v. Wiswall, 112 U. S. 187, 28 L. ed. 693, 5 Sup. Ct. Rep. 90.

[23] Stanbrough v. Cook, 38 Fed. 369, 3 L.R.A. 400; Barth v. Coler, 19 U. S. App. 646, 9 C. C. A. 81, 60 Fed. 466; Thurber v. Miller, 14 C. C. A. 432, 67 Fed. 371.

[d] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.

ferent defenses does not create separable controversies.[24] In Bates v. Carpentier, 98 Fed. 452, the court said "that, in order to justify a removal of a cause on the ground of a separate controversy between citizens of different states, the whole subject-matter of the suit must be capable of being finally determined as between them, and complete relief afforded as to the separate causes of action, without the presence of others, originally made parties to the suit." In Goldsmith v. Gilliland, 24 Fed. 154, 10 Sawy. 606, it was decided that a suit to quiet title to real property presented a subject-matter capable of such separable determination, and, "where a number of persons claim undivided interests in real property adversely to one in possession of the same, the latter may maintain a suit to quiet his title against any or all of such claims, and neither of said persons or adverse claimants is a necessary party to a suit for that purpose against the other." Where an action is brought by one plaintiff against several defendants, not because they claim any joint interest or are subject to any joint liability in respect to the subject-matter of the action, but merely for convenience, it will generally be capable of resolution into separable controversies between the plaintiff and the individual defendants.[25] A bill in equity to quiet title to real property, brought under the above conditions, has been decided to include a separable controversy with each of the defendants, so that, if one of them is a nonresident, he may remove the suit.[26] The fact that separate answers are filed, which raise separate issues in defending against one cause of action, does not create separable controversies, within the meaning of that term as used in the statute. They simply present different questions to be settled in determining the rights of the parties in respect to the one cause of action for which the suit was brought.[27] In Shain-

[24] Robbins v. Ellenbogen, 71 Fed. 4, 18 C. C. A. 83.

[25] Black, Dill, Rem. Causes, par. 148; Bates v. Carpentier, 98 Fed. 452.

[26] Field v. Lownsdale, Deady, 288, Fed. Cas. No. 4,769; Goodenough v. Warren, 5 Sawy. 494, Fed. Cas. No. 5,534; Stanbrough v. Cook, 38 Fed. 369, 3 L.R.A. 400.

[27] Hyde v. Ruble, 104 U. S. 407, 26 L. ed. 823; Winchester v. Loud, 108 U. S. 130, 27 L. ed. 677, 2 Sup. Ct. Rep. 311; Shainwald v. Lewis, 108 U. S. 158, 27 L. ed. 691, 2 Sup. Ct. Rep. 385; Deposit Co. v. Huntington, 117 U. S. 280, 29 L. ed. 898, 6 Sup. Ct. Rep. 733; Graves v. Corbin, 132 U. S. 571, 33 L. ed. 462, 10 Sup. Ct. Rep. 196; Torrence v. Shedd, 144 U. S. 527, 36 L. ed. 528, 12 Sup. Ct. Rep. 726.

wald v. Lewis, 108 U. S. 158, 27 L. ed. 691, 2 Sup. Ct. Rep. 385, the suit was brought for the dissolution and settlement of an alleged partnership. The court said there was no separable or removable controversy. "The main dispute," said the court, "is about the existence of the partnership. All the other questions in the case are dependent on that. If the partnership is established, the rights of the defendants are to be settled in one way; if not, in another. There is no controversy in the case which now can be separated from that about the partnership, and fully determined by itself." In Deposit Co. v. Huntington, 117 U. S. 280, 29 L. ed. 898, 6 Sup. Ct. Rep. 733, the suit was a creditors' bill to subject encumbered property to the payment of the creditors' judgment, by sale and distribution of the proceeds among lien holders according to their priority. One lien holder sought to remove the suit, as to him, to a United States court, upon the ground that as to him there was a wholly separable controversy. The court said: "There is but a single cause of action, and that is the equitable execution of a judgment against the property of the judgment debtor. This cause of action is not divisible. Each of the defendants may have a separate defense to the action, but we have held many times that separate defenses do not create separate controversies, within the meaning of the removal act." In Graves v. Corbin, 132 U. S. 571, 33 L. ed. 528, 12 Sup. Ct. Rep. 726, the suit was a bill in equity filed in a state court by a judgment creditor of a partnership to reach its entire property. Certain judgments confessed by the firm, on which levies had been made, were attached for fraud. One of the judgment creditors removed the cause to the circuit court upon the ground that as to him there was a separable controversy. After a final decree for the plaintiff, the supreme court, on an appeal therefrom, held that the case was not removable. A suit to try title to land is not a separable controversy.[28] An action to foreclose a mortgage where there are several defendants is not a separable controversy.[29] The rule as illustrated by these cases in concise form is that if a nonresident party has an interest in a controversy which is sepa-

[28] Lomax v. Foster Lumber Co. 99 C. C. A. 463, 174 Fed. 959.
[29] Thompson v. Dixon, 28 Fed. 6.

rate and distinct, and does not necessarily involve the interest of the other defendants in the issue, or the other party on the same side, he can remove the whole case into the Federal court. On the other hand, if the interests of the other party are so identified and so mixed up that they must and should be decided together, and depend on the final decree, which must depend upon and involve the rights of both parties, then it cannot be removed when one of the parties is a citizen of the same state with the plaintiff or defendant.[30] Another class of cases in which the question of separable controversy arises is where there is a *joint and several liability*. Where the plaintiff's cause of action is joint and several, he has the option whether to sue the defendants individually or to join them in one action. If he elects to pursue the latter course, his choice determines the character of the suit, and no one of the defendants can treat the suit as it concerns him as several, for the purpose of a removal to the Federal court.[31] In Pirie v. Tvedt, 115 U. S. 41, 29 L. ed. 331, 5 Sup. Ct. Rep. 1034, the court said: "The cause of action is several as well as joint, and the plaintiffs might have sued each defendant separately, or all jointly. It was for the plaintiffs to elect which course to pursue. They did elect to proceed against all jointly, and to this defendants are not permitted to object. The fact that a judgment in the action may be rendered against a part of the defendants only does not divide a joint action in tort into separate parts, any more than it does a joint action in contract." A defendant has no right to say that an action shall be several which the plaintiff elects to make joint. A separate defense may de-

[30] Wilson v. St. Louis, etc., Ry. Co. 22 Fed. 3, Affirmed St. Louis, etc., Ry. Co. v. Wilson, 114 U. S. 60, 29 L. ed. 66, 5 Sup. Ct. Rep. 738; Central R. Co. v. Mills, 113 U. S. 249, 28 L. ed. 949, 5 Sup. Ct. Rep. 456; Louisville & N. R. Co. v. Ide, 114 U. S. 52, 29 L. ed. 63, 5 Sup. Ct. Rep. 735; Putnam v. Ingraham, 114 U. S. 57, 29 L. ed. 65, 5 Sup. Ct. Rep. 746; Pirie v. Tvedt, 115 U. S. 41, 29 L. ed. 331, 5 Sup. Ct. Rep. 1034; Crump v. Thurber, 115 U. S. 56, 29 L. ed. 328, 5 Sup. Ct. Rep. 1154; Price v. Foreman, 11 Biss. 328, 12 Fed. 801; Mitchell v. Tillotson, 11 Biss. 325, 12 Fed. 737; Winchell v. Carli, 24 Fed. 865.

[31] Black, Dill. Rem. Causes, par. 145; Brown v. Coxe Bros. & Co. 75 Fed. 689; Boyd v. Gill, 19 Fed. 145, 21 Blatchf 543; Telegraph Co. v. Brown, 32 Fed. 337; Mutual Reserve Fund Life Ass'n v. Farmer, 23 C. C. A. 574, 77 Fed. 929; Railroad Co. v. Ide, 114 U. S. 52, 29 L. ed. 63, 5 Sup. Ct. Rep. 735; Pirie v. Tvedt, 115 U. S. 41, 29 L. ed. 331, 5 Sup. Ct. Rep. 1034; Little v. Giles, 118 U. S. 596, 30 L. ed. 269, 7 Sup. Ct. Rep. 32; Torrence v. Shedd, 144 U. S. 527, 36 L. ed. 528, 12 Sup. Ct. Rep. 726.

feat a joint recovery, but it cannot deprive a plaintiff of his right to prosecute his own suit to final determination in his own way. The cause of action is the subject-matter of the controversy; and that is for all purposes of the suit, whatever the plaintiff declares it to be in his pleadings.[32] And if a person has a cause of action on which he may properly sue either one or two parties, and he chooses to sue both, he may do so though his motive in joining them is to prevent a removal to a Federal court. That is, the motive is not considered.[33] In this case, Deere, Wells & Co. v. Chicago, M. & S. V. Ry. Co. 85 Fed. 876, it was held that an action for damages against a railroad company incorporated by another state, and one of its section foremen, who is a citizen of the same state with plaintiff, charging them jointly with setting out a fire on the railroad right of way to clear it of dry grass and weeds, and negligently permitting it to spread to plaintiff's premises, does not disclose a separable controversy which would enable the railroad company to remove the cause. In one action against a railroad company for negligence in handling a train and against a Pullman company for negligence in constructing the berth out of which the plaintiff was thrown, the court said: "In the first count of the declaration there is a separate and distinct cause of action stated against each one of the defendants, and neither one of the defendants could be held liable on the facts specifically averred against the other." The controversy is separable.

§ 290. Procedure on Removal—Class One, Two, and Three—Petition for Removal to be Filed before Appearance Day in State Court.

Cl. 1, § 29, Judicial Code,[e] *36 Stat. at L. 1095, Comp. St. 1911, p. 142, 1912 Supp. F. S. A. v. 1, p. 145.* "Whenever

[32] Railroad Co. v. Ide, supra; Sloane v. Anderson, 117 U. S. 275, 29 L. ed. 899, 6 Sup. Ct. Rep. 730; Little v. Giles, supra; Hedge Co. v. Fuller, 122 U. S. 535, 30 L. ed. 1235, 7 Sup. Ct. Rep. 1265.

[33] Deere Well & Co. v. Chicago, M. & S. V. P. Ry. Co. 85 Fed. 876.

[e] Part of this section is new legislation, the remainder is a re-enactment of 25 Stat. at L. 433, Foster's Fed. Prac. (4th ed.) pp. 86, 138, 200, 1197, 1488, 1510–14, 1517, 1524, 1529, 1531, 1549, 1556–7, 1565–9, 1581, 1594, 1596, Comp. St. 1901, p. 510, 4 F. S. A. 349, without material change, which section is repealed by § 297, Judicial Code.

any party entitled to remove any suit mentioned in the last preceding section, except suits removable on the ground of prejudice or local influence, may desire to remove such suit from a state court to the district court of the United States, he may make and file a petition, duly verified, in such suit in such state court at the time, or any time before the defendant is required by the laws of the state or the rule of the state court in which such suit is brought to answer or plead to the declaration or complaint of the plaintiff, for the removal of such suit into the district court to be held in the district where such suit is pending. . . ."

The party removing is also required to file a bond and transcript and give notice as set out in the following sections:

FORM 1.

PETITION FOR REMOVAL WHERE CAUSE INVOLVES A FEDERAL QUESTION.

In the District Court of, etc.,—State of Idaho.

[Title of Cause.]

To the Honorable Judge of the Court aforesaid:

Your petitioners, defendants in the above-entitled action, respectfully represent and show to your honorable court:

That this is a civil action brought in this court in pursuance of an adverse claim, filed in the United States land office at Cœur d' Alene city, state of Idaho, by the plaintiff herein, to the application of the petitioners for a United States patent to a certain parcel of mineral land, situated in Shoshone county, in said state. That said action is in pursuance of the provisions of § 2326 of the Revised Statutes of the United States, for the determination of controversies arising between claimants to the right of possession of mineral lands claimed for patent by the parties thereto.

Your petitioners allege that they are each citizens of the United States and residents and citizens of the county of Shoshone, state of Idaho, and that the Shoshone Mining Company is a corporation doing business and claiming to be organized and existing under the laws of the state of Idaho.

Consent of counsel does not give district court jurisdiction. In re Foley, 76 Fed. 390. But facts may be admitted which will give the court jurisdiction. Pittsburg. etc., R. Co. v. Ramsey, 22 Wall. 322, 22 L. ed. 823; Hyde v. Victoria Land Co. 125 Fed. 970.

In general, Fayette Title & Trust Co. v. Maryland, P. & W. V. Tel. & Teleg. Co. 180 Fed. 928.

Petition, time for filing, Lewis v. Cincinnati, N. O. & T. P. Ry. Co. 192 Fed. 654.

Grounds for remand, Western Union Teleg. Co. v. Louisville & N. R. Co. et al. 201 Fed. 932.

Procedure, Goins v. S. P. Co. 198 Fed. 432.

Application, notice, Cayce v. Southern R. Co. 195 Fed. 786.

That the value of the premises described in the complaint, exclusive of interest and costs, exceeds the sum of three thousand ($3,000) dollars.

That this action is a special action created and authorized by the statutes of the United States, to facilitate the sale and disposition of the public mineral lands by the land department, and involves the right of possession conferred by said statutes on claimants of the same who desire to obtain patents for the lands claimed by them, and is therefore within the jurisdiction of the courts of the United States.

That this action involves the questions of what is a lawful location of a mineral claim; what discovery of mineral is required to support such location, and what rights follow such location, discovery, and attempted appropriation, and the proper construction of the acts of Congress relating thereto.

That your petitioners are claimants of the title to the premises in controversy and the plaintiff is an adverse claimant thereto under the statute.

Your petitioners herewith present a good and sufficient bond as provided by the statute in such cases, that they will enter in such district court for the Northern Division of the District of Idaho, within thirty days from the filing of this petition a certified copy of the record in this suit and for the payment of all costs which may be awarded by the said court, if the said district court shall hold that this suit was wrongfully or improperly removed thereto. (If special bail was originally requisite in said cause add here, "and shall then and there appear and enter special bail in said suit.")

Your petitioners therefore pray that this court proceed no further herein, except to make the order of removal as required by law and to accept the bond presented herewith, and direct a transcript of the record herein to be made for said court as provided by law, and as in duty bound your petitioners will ever pray.

State of .....,
County of ..... } ss.

VW and XY, being each duly sworn according to law, severally depose and say:

I am one of the petitioners in the above-written petition and have read said petition, and the same is true of my own knowledge, except such matters as are therein stated on information and belief, and as to such statements I believe it to be true.

Subscribed and sworn to, etc.

FORM 2.

Verification by Attorney.

State of .....,
County of ..... } ss.

VP, being first duly sworn, on oath says that he is one of the attorneys of the defendant in the above-entitled cause and of the petitioner named in the foregoing petition; that he has read the same and believes the same to be true, and affiant further says that said petitioner is absent from and is a nonresident of the county of ....., State of ....., in which

said suit is brought, and that affiant makes this affidavit for the reason that the defendant is absent from and is a nonresident of the said county of .....; in which said suit is brought.

VP.

Sworn, etc.

FORM 3.

PETITION FOR REMOVAL. INVOLVING FEDERAL QUESTION.

In the Superior Court, etc.—State of California.
[Title of Cause.]

Now at the time of filing his first appearance in said entitled cause comes the said defendant and presents to this Honorable Court his petition for removal of this suit to the District Court of the United States, in and for the northern district of California, held at the City of San Francisco, and as grounds therefor respectfully shows:

First. That as shown by plaintiff's complaint on file herein, this suit arises under the laws of the United States providing for the disposition and sale of the public gold-bearing mineral lands.

Second. That each of the plaintiffs is and for more than five years last past has been a citizen of the state of California.

Third. That the defendant is and for more than five years last past has been a citizen of Minnesota.

Fourth. That the lands in controversy in this suit are of the value of $3,000.

Conclusion as in form 1.

Verification as in form 1 or 2.

FORM 4.

PETITION FOR REMOVAL INVOLVING FEDERAL QUESTION.

In the Superior Court of, etc.—State of California.
[Title of Cause.]

Your petitioners respectfully show that they are the defendants in this action, which is of a civil nature, in equity, and that the matter or amount in dispute exceeds the sum of $3,000, exclusive of interest and costs.

That said action is in equity, of a civil nature, and arises under the Constitution and laws of the United States.

That the defendants, at and about the time of the commencement of the above-entitled action, were in the possession and occupancy of the mining ground known as the St. Lawrence Mine, near Moore's Flat, in Nevada county, state of California, and were engaged in working said property by the hydraulic process under a license or permit duly and regularly made and issued to the defendant Ah Wing as the owner of the property by the commissioners appointed and acting under and in pursuance of an act of the Congress of the United States, approved March 3, 1893, entitled, "An

Act to Create the California Debris Commission, and to regulate Hydraulic Mining in the State of California."

That said mining was carried on by said defendants in conformity to the license or permit aforesaid, and the rules, regulations, and requirements of said commission, and the provisions of said act of Congress.

That said action is brought to restrain and enjoin the defendants and each and all of them from working said mine by the hydraulic process; that the question of the force and effect of the said act of Congress and of the power and authority of said debris commission under said act of Congress, and of the legal effect of the license or permit granted by said commission to the defendant Ah Wing, and other acts performed by said commission relating to the subject-matter of this action, are involved in said action; that said defense rests mainly upon said act of Congress and upon the power and authority of the said commission thereunder, as will more fully appear from the complaint on file, and from the answer of the defendants thereto, filed herewith, to which reference is hereby made.

Conclusion as in form 1.

Verification as in form 1 or 2.

FORM 5.

Petition for Removal—Citizens of Different States.

(Nonresident Plaintiff v. Nonresident Defendant.)

In the Superior Court of, etc.—State of Washington.

[Title of Cause.]

To the Honorable Judges of the above-entitled court:

Comes now your petitioner, ... the above-named defendant, by his attorneys, ... and respectfully represents to this honorable court:

1. That on the ..... day of ....., ..., the above-named plaintiff filed a complaint in the superior court of King county, state of Washington, praying for a judgment against the defendant upon a promissory note for the sum of three thousand ($3000.00) dollars, with interest at 10 per cent per annum from ....., with costs, and attorneys' fees of 5 per cent of the amount due.

2. That on said date, and immediately after filing said complaint, the said plaintiff caused to be sued out a writ of attachment, and caused said writ of attachment to be delivered to the sheriff, who thereupon levied upon property of your petitioner in King county, Washington.

3. Your petitioner further avers that the time has not elapsed wherein your petitioner is allowed under the practice and laws of the state of Washington and the rules of said court to appear, plead, demur, or answer said complaint.

4. Your petitioner further avers that at the time of the commencement of said suit, and ever since then, and at the present time the plaintiff in said action, the Harrisburg Trust Company, was and is a corporation organized and existing under and by virtue of the laws of the commonwealth of

Pennsylvania, and was a citizen and resident of the state of Pennsylvania, having its principal place of business at the city of Harrisburg in said state, and the defendant, at the time of the commencement of said suit was, and ever since has been, and still is, a citizen of the state of Wisconsin and a resident thereof, residing at the city of Oconomowoc in said state of Wisconsin.

5. Your petitioner further avers that this is a controversy between citizens of different states and more than three thousand ($3,000) dollars, exclusive of interest and costs, is involved therein.

Conclusion as in form 1.

Verification as in form 1 or 2.

FORM 6.

PETITION FOR REMOVAL—CITIZENS OF DIFFERENT STATES.

(Resident Plaintiff v. Nonresident Defendant.)

In the Superior Court of, etc.—State of California.

[Title of Cause.]

To the Honorable Superior Court of Humboldt County, State of California.

The petition of ..... and ..... defendants in the above-entitled action, respectfully show to this honorable court.

That your petitioners are defendants in the above-entitled action.

That said action has been commenced against them in said court by said plaintiff, and that said action is of a civil nature.

That said plaintiff, in his complaint herein, claims in substance that on the .... day of ....., ..., your petitioner entered into a contract in writing with plaintiff for the purchase and acquisition of certain timber lands situate in said county and state, and that in such purchase and acquisition said plaintiff rendered certain services for defendants upon an agreed price, amounting to the sum of $5,479.46, for which he demands judgment against said defendants.

That your petitioners dispute said claim and deny all liability under the contract set out in the complaint herein.

That the matter in dispute in this action exceeds the sum of three thousand dollars, exclusive of interest and costs.

That the controversy in this action and every issue of fact and law therein is wholly between citizens of different states, and which can be fully determined as between them—that is to say, the plaintiff, .. , is now, and was at the time of the filing of the complaint in this action, a citizen and resident of the state of California, and the defendants, ... and ....., were then and still are citizens and residents of the state of New York.

That the time for your petitioners, as defendants in this action, to answer or plead to the complaint in said action has not yet expired and will not so expire until the ..... day of ....., ..., and your petitioners have not yet filed or in any way appeared therein.

Conclusion as in form 1.

Verification as in form 1 or 2.

FORM 7.

PETITION FOR REMOVAL.

(Resident Plaintiff v. Nonresident Defendant and Resident Defendant who has Disclaimed All Interest in the Action.)

In the Superior Court of, etc.—State of California.
[Title of Cause.]

The petition of ....., one of the above-named defendants, shows to the court as follows:

That the above suit was begun against your petitioner, ... and ....., in the superior court of the city and county of San Francisco, state of California, by the filing of a complaint and the service of a summons and copy of the complaint therein, on the .. day of ....., ... That the defendant, ..., filed his answer in said cause on the ..... day of ....., ... That your petitioner has not yet filed his answer; but that, as to your petitioner, said cause is now pending on his motion to strike out portions of the complaint herein; that said cause has not been tried, and that this is the first term of said superior court at which the same could by any probability be tried.

That at the time said suit was begun, and at the present time, the plaintiff was and is a citizen and resident of the state of California, and the defendant, ..., was and is a citizen and resident of the state of Nevada; and that the said defendant, ..., was and is a citizen and resident of the state of California.

That the matters in dispute in said suit, and for which said suit is brought, exceed the sum of three thousand dollars, exclusive of costs. That the defendant, ..., has no interest in said action or the matters in dispute therein, or in any of the property therein mentioned, and has filed his answer disclaiming any interest of any name or nature in the same, or in the property described therein, and the same is wholly and solely the property of the defendant, ...

Conclusion as in form 1.

Verification as in form 1 or 2.

FORM 8.

PETITION FOR REMOVAL.

(Citizens v. Aliens.)

In the Superior Court of, etc.—State of California.
[Title of Cause.]

The petition of ....., one of the above-named defendants, shows to the court as follows:

That the above suit was begun against your petitioners, ..., and ....., in the superior court of the county of Marin, state of

California, by the filing of a complaint, and the service of a summons and a copy of the complaint herein on the defendants.

That your petitioners have not yet filed their answer, but that, as to your petitioners, said cause is now pending, that said cause has not been tried, and that this is the first term of said superior court at which the same could by any probability be tried.

That at the time said suit was begun, and at the present time, the plaintiffs are citizens and residents of the state of California, and the defendants are aliens and subjects of the United Kingdom of Great Britain and Ireland; the said defendant, ..., being a resident of the county of Marin, and the said ..... residents of the county of Alameda, state of California.

That the matters in dispute in said suit, and for which said suit is brought, exceed the sum of three thousand dollars, exclusive of interest and costs.

Conclusion as in form 1.

Verification as in form 1 or 2.

FORM 9.

PETITION FOR REMOVAL FROM STATE COURT TO DISTRICT COURT.

(Resident Plaintiff v. Alien Defendant.)

In the Superior Court of, etc.—State of Washington.

[Title of Cause.]

To the Honorable, the Superior Court of the State of Washington, in and for the county of Jefferson, and to the Honorable ..... Judge thereof:

The petition of ....., the defendant in the above-entitled act, respectfully shows:

I.

That said action is a suit of a civil nature at common law, of which the district court of the United States has original jurisdiction, and has been brought and is now pending in this honorable court, and has not yet been tried, nor has the time at or before which the defendant, this petitioner, is required, by laws of the state of Washington, or any rules or rule of this honorable court, to answer or plead to the complaint of plaintiff elapsed, and the matter in dispute in said suit exceeds, exclusive of interest and costs, the sum and value of three thousand dollars, and said suit is a controversy between the plaintiff, who, at the time of the commencement of said suit, was and now is a citizen of the state of Washington, and this defendant, who is not a citizen of the state of Washington, but was, at the time of the commencement of said suit, and now is, a foreign citizen and subject; that is to say, a citizen of the British Empire and a subject of her Britannic Majesty, Queen Victoria, and that there are no other parties to said suit.

II.

That by reason of the premises this petitioner, said defendant, desires and is entitled to have said suit removed from said superior court of the state of Washington into the district court of the United States for the proper district at this time.

III.

That the district court of the United States for the ninth circuit, and in and for the northern division of the district of Washington, holding terms at the city of Seattle, is the district court of the United States for the proper district, being the district court of the United States held in the district where said suit is pending.

Conclusion as in form 1.

Verification as in form 1 or 2.

FORM 10.

PETITION FOR REMOVAL—SEPARABLE CONTROVERSY.

In the Superior Court of, etc.—State of California.

[Title of Cause.]

To the Honorable, the Superior Court of the city and county of San Francisco, State of California:

The petition of ....., one of the above-named defendants, shows as follows:

Your petitioner shows to this honorable court that he is one of the defendants in this suit, which is of a civil nature, and that the matter or amount in dispute in this cause exceeds the sum or value of three thousand dollars, exclusive of interest and costs.

That the controversy herein is between citizens of a state and of a foreign state; that the plaintiff, ..., was at the time of the commencement of this suit, and still is, a citizen of the state of California, residing in the county of Sonoma, in said state, and that your petitioner, ..., was, at the time of the commencement of this suit, and for seventeen years last past has been, a resident of the city of Denver, in the state of Colorado, and that your petitioner desires to remove this suit before the trial thereof into the next district court of the United States to be held in the ..... northern district of California.

Your petitioner further shows that the causes of action that the plaintiff herein has against the two defendants for damages for the death of ..... are separable controversies.

That on the .... day of ....., ..., your petitioner was engaged as an independent contractor to do certain work in the construction of a building on the lot of land situate at the southwest corner of Market and Third streets; that in the prosecution of said work it became and was necessary to place a certain piece of timber in an upright position, so that one end of said timber was against the under part of said cornice, and the other end was on the roof of the building on the lot next adjoining on the west.

That the defendant, ..., is the owner of said last-mentioned lot. That it is claimed by the plaintiff that the aforesaid piece of timber fell from its place and struck the said ....., who was on the street beneath, and so injured him that he subsequently died.

That the cause of action that the plaintiff, ... has, if she has any, against your petitioner, is for his negligence, through his agents and servants, in improperly placing the said piece of timber. That the cause of action that plaintiff, ..., has, if she has any, against the defendant, ..., is for maintaining a nuisance upon his said premises. That therefore the said two causes of action are separable.

Conclusion as in form 1.

Verification as in form 1 or 2.

FORM 11.

PETITION FOR REMOVAL—SEPARABLE CONTROVERSIES AFTER DISMISSAL OF SUIT AGAINST OTHER DEFENDANTS.

[Title of Court and Cause.]

To the Honorable, the ..... Court of State of .....

Your petitioner respectfully shows that it is one of the defendants in the above-entitled suit, and that the matter and amount in dispute in said suit exceeds, exclusive of interest and costs, the sum or value of three thousand dollars.

That there is in said suit a controversy which is wholly between citizens of different states, and which can be fully determined as between them, to wit, between your petitioner, the ..... Ry. Co., defendant in said suit, who avers that it was at the commencement of this suit, and still is, a corporation organized under the laws of the states of Virginia and West Virginia, and of no other state, and that it was then and still is a citizen and resident of the states of Virginia and West Virginia, and of no other state, and that it was not then, and is not now, a resident or citizen of the state of Kentucky—and the plaintiff, ..., who was, at the commencement of this suit, and still is, a resident and citizen of the state of Kentucky. Your petitioner further says that the said defendants, ..., and ....., are all and every of them, citizens and residents of the state of Kentucky, and that they are fraudulently and improperly joined as parties defendant for the sole purpose of defeating the right of petitioner to remove to the United States circuit court.

That because of said joinder of said ..... and ....., being citizens of the same state as said plaintiff, said cause was remanded to the state court.

Your petitioner says that the said suit as to said ..... and ..... was, on the ..... day of ....., ... dismissed, that the said cause is now, for the first time, pending as to the said ..... alone.

Conclusion as in form 1.

Verification as in form 1 or 2.

§ 291. Bond on Removal in Classes One, Two, and Three.

Pt. § 29, Judicial Code,[f] *36 Stat. at L. 1095, Comp. St. 1911, p. 142, 1912 Supp. F. S. A. v. 1, p. 146.* "Whenever any parties entitled to remove any suit mentioned in the preceding section, except suits removable on the ground of prejudice or local influence, . . . (he) shall make and file therewith a bond, with good and sufficient surety, for his or their entering in such district court, within thirty days from the date of filing said petition, a certified copy of the record in such suit, and for paying all costs that may be awarded by the said district court if said district court shall hold that such suit was wrongfully or improperly removed thereto, and also for their appearing and entering special bail in such suit if special bail was originally requisite therein."

FORM 12.

BOND ON REMOVAL.

[Title of State Court and Cause.]

Know all men by these presents, that we, XY and Z, as principals, and M and N, as sureties, residents, and ..... of the county of ....., State of ....., are held and firmly bound unto AB, plaintiff in the above-entitled cause, his successors and assigns, in the sum of five hundred ($500) dollars, lawful money of the United States of America, for the payment of which well and truly to be made, we and each of us bind ourselves, and each of us, our heirs, executors, and administrators, jointly and severally, by these presents.

The conditions of this obligation are such that:

Whereas, the said XY and Z have applied by petition to the (superior) court of the state of ....., in and for the county of ....., for the removal of a certain cause therein pending wherein AB is plaintiff and the said XY and Z are defendants, to the district court of the United States for the district of ....., ... division, for further proceedings on grounds in the said petition set forth, and that all further proceedings in said action in said ..... court be stayed.

Now, therefore, if your petitioners, the said XY and Z shall enter in said district court of the United States for the district of ....., aforesaid, within thirty days from the date of filing said petition, a certified copy of the record in such suit, and shall pay or cause to be paid all costs that may be awarded therein by said district court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, [Note.—If special bail was originally requisite in said cause add here:

[f] For Annotation of this § 29, Judicial Code, see footnote [e], ante, our § 290.

"And shall then and there appear and enter special bail in said suit"], then this obligation shall be void; otherwise shall remain in full force and effect.

Signed, subscribed and sworn, etc.

.....

Sureties' Justification.

State of ....., }
County of ..... } ss.

M and N, the sureties named in the foregoing bond, being first duly sworn, each for himself, deposes and says as follows: I am the same person whose name is subscribed to the foregoing bond, and I state I am a householder and resident of the county and State aforesaid, and that I am worth the sum of five hundred ($500) dollars named therein as the penalty thereof, over and above all my just debts and liabilities, exclusive of property which is exempt from execution.

M.
N.

Subscribed and sworn, etc.

§ 292. Duty of State Court in Such Cases.

Pt. § 29, Judicial Code,[g] *36 Stat. at L. 1095, Comp. St. 1911, p. 142, 1912 Supp. F. S. A. v. 1, p. 146.* ". . . It shall then be the duty of the state court to accept said petition and bond and proceed no further in such suit."

§ 293. Notice to Adverse Party in Such Cases.

Pt. § 29, Judicial Code,[h] *36 Stat. at L. 1095, Comp. St. 1911, p. 142, 1912 Supp. F. S. A. v. 1, p. 146.* ". . . Written notice of said petition and bond for removal shall be given the adverse party or parties prior to filing the same."

FORM 13.

NOTICE OF PETITION AND BOND FOR ORDER OF REMOVAL.

[Title of State Court and Cause.]

To Messrs. P and Q, Attorneys for Plaintiff:

Please take notice that the defendants will on ....., the .... day of ....., ..., at 10 o'clock, A. M., or as soon thereafter as counsel can be heard, move the court for an order removing said cause to the district court of the United States for the ..... district of ..... in ac-

[g] For Annotation of this § 29, Judicial Code, see footnote [e], ante, our § 290.
[h] For Annotation of this § 29, Judicial Code, see footnote [e], ante, our § 290.

cordance with the petition and bond of defendants, copies of which are hereto attached.

Dated the .... day of ....., ...

.....,

Attorney for defendants.

FORM 14.

ORDER OF REMOVAL.

[Title of State Court and Cause.]

This cause coming on for hearing upon petition and bond of the defendant herein for an order transferring this cause to the United States district court for the ..... district of ....., ... division, and it appearing to the court that the defendant has filed his petition for such removal in due form of law, and that the defendant has filed his bond duly conditioned, with good and sufficient sureties, as provided by law, and that defendant has given plaintiff due and legal notice thereof, and it appearing to the court that this is a proper cause for removal to said district court.

Now, therefore, said petition and bond are hereby accepted and it is hereby ordered and adjudged that this cause be and it hereby is removed to the United States district court for the ..... district of ....., ... division, and the clerk is hereby directed to make up the record in said cause for transmission to said court forthwith.

Done in open court, this .... day of ....., ...

.....,

Judge.

FORM 15.

CLERK'S CERTIFICATE WITH RECORD.

[Title of State Court and Cause.]

State of ....., }
County of ..... } ss.

I, F, county clerk of said county of ....., and ex-officio clerk of the superior court in and for said county, hereby certify the above and foregoing to be a full, true, and correct copy of the record, and the whole thereof, in the above-entitled suit heretofore pending in said superior court, being the suit numbered No. ...., wherein AB is plaintiff and XY are defendants, said record consisting of the complaint, filed by said plaintiff in said suit on the .... day of ....., ..; the summons and return thereon, filed in said suit on the .... day of ....., ... (here add any other proceedings that may have been filed) the petition for removal of said suit to the United States district court, filed by said defendant in said suit on the .... day of ...., the bond for removal, the notice of petition and bond, and the order of removal of said suit to said United States district court, entered of record

in said suit on the .... day of ....., ..., all as appears on the files and of record in my office.

In testimony, etc.

....., Clerk.

[Seal]

FORM 16.

NOTICE OF REMOVAL.

In the District Court of, etc., of the United States.

[Title of Cause.]

You and each of you will please take notice that on the .... day of ....., ..., the above-entitled cause was duly transferred from the ..... court of the ..... county of ....., state of ....., to the district court of the United States, in and for the ..... district of ....., and that the record in said cause has this day been duly filed in the said United States district court.

Dated ....., ...

P. & Q,
Attorneys for Defendant.

To the above-named plaintiff and to Messrs. ..... and ....., Attorneys for Plaintiff.

§ 294. Procedure after Removal in Classes One, Two, and Three.

Pt. § 29, Judicial Code,[1] *36 Stat. at L. 1095, Comp. St. 1911, p. 142, 1912 Supp. F. S. A. v. 1, p. 146.* ". . . The said copy being entered within said thirty days as aforesaid in said district court of the United States, the parties so removing the said cause shall, within thirty days thereafter, plead, answer, or demur to the declaration or complaint in said cause, and the cause shall then proceed in the same manner as if it had been originally commenced in the said district court."

§ 295. Class Four; Removal on Ground of Prejudice.

Pt. § 28, Judicial Code,[j] *36 Stat. at L. 1094, Comp. St. 1911, p. 141, 1912 Supp. F. S. A. v. 1, p. 145.* ". . . And where a suit is now pending, or may hereafter be brought, in any state court, in which there is a controversy between a citizen of the state in which the suit is brought and a citizen

[1] For Annotation of this § 29, Judicial Code, see footnote [e], ante, our § 290.
[j] For Annotation of this § 28, Judicial Code, see footnote [e], ante, our § 221.

of another state, any defendant, being such citizen of another state, may remove such suit into the district court of the United States for the proper district, at any time before the trial thereof, when it shall be made to appear to said district court that from prejudice or local influence he will not be able to obtain justice in such state court, or in any other state court to which the said defendant may, under the laws of the state, have the right, on account of such prejudice or local influence, to remove said cause. . . ."

The petition or affidavit in this class of cases is addressed to the Federal district court, instead of the state court, as in classes one, two, and three discussed above. No notice of the filing of the petition seems to be required, nor need a bond be given although both notice and bond are the usual practice. The district court enters an order of removal, which order should be filed in the state court (form 14, above, may be used by entitling in the Federal court), and a transcript of the record obtained from the state court (form 19 gives the writ to obtain same) should be filed in the Federal court.[34]

Removal in these cases, instead of being required before the defendant is obligated under state practice to plead, may be "at any time before trial thereof," to wit, "before or at the term at which the cause could first be tried and before trial thereof."[35]

FORM 17.

PETITION FOR REMOVAL ON GROUND OF PREJUDICE OR LOCAL INFLUENCE.

In the District Court of the United States, etc.

[Title of Cause.]

Petition for removal from the Superior Court of the State of ....., in and for the county of .....

To the Honorable, the Judge of the District Court of the United States for the ..... District of .....:

Your petitioner, the above-named Z, respectfully shows to this honorable

[34] Pennsylvania Co. v. Bender, 148 U. S. 255, 37 L. ed. 411, 13 Sup. Ct. Rep. 591.

[35] McDonnell v. Jordan, 178 U. S. 229, 44 L. ed. 1048, 20 Sup. Ct. Rep. 886.

court that A, as plaintiff, brought suit of a civil nature in the superior court of the state of ....., in and for the county of ....., against your petitioner Z, and that the matter or amount in dispute in said cause exceeds the sum or value of three thousand dollars, exclusive of interest and costs.

That the said controversy is between citizens of different states; that the plaintiff A was, at the time of the commencement of this suit and still is a citizen of the state of ....., the state wherein such suit is pending, and is residing at ..... in said state; and that your petitioner Z was, at the time of the commencement of this suit, and still is, a citizen of the state of ....., and of no other state, residing in the city of ..... in said state, and that your petitioner desires to remove this suit which is now pending and undetermined in said state court, before the trial thereof, into the district court of the United States to be held in the ....., district of .....

Your petitioner further shows unto this honorable court that from prejudice and local influence in favor of the plaintiff and adverse to this defendant he will not be able to obtain justice in said court or in any other state court to which said defendant may, under the laws of the state, have a right to remove said cause, on account of such prejudice or local influence.

Wherefore your petitioner prays that an order be entered for the removal of said case from the ..... court of said state to this court, and that a writ of certiorari issue for the return to this court of a certified copy of the record in said state court.

....., Petitioner.

Verification as in form 1 or 2.

FORM 18.

AFFIDAVIT FOR REMOVAL OF CAUSE FOR PREJUDICE, ETC.

[Title of Federal Court and Cause.]
United States of America, }
..... District of ..... } ss.

I, Z, being duly sworn, do say that I am the defendant [or one of the defendants] in the above-entitled cause which is now pending for trial in the superior court of the state of ..... in and for the county of ....., and that from prejudice and local influence I shall not be able to obtain justice in said state court or in any other state court to which I may, under the laws of said state, have the right, on account of such prejudice or local influences, to remove said cause.

Subscribed and sworn to, etc.

FORM 19.

WRIT OF CERTIORARI FOR REMOVAL ON GROUND OF PREJUDICE OR LOCAL INFLUENCE.

The President of the United States of America to the Superior Court of the State of ....., in and for the County of ....., Greeting:

It being represented to us that there is now pending before you a certain cause No. ....., wherein A is plaintiff and Z is defendant, which cause was commenced in the superior court of the state of ....., in and for the county of ....., by A against the said Z, for the purpose of (state object of suit), and that on the .... day of ....., a summons was issued out of said court and that no trial has yet been had; and, whereas, said defendant has caused to be filed, in our district court for the ..... district of ....., his petition for the removal of the said cause from the said superior court to the District Court of the United States for the .....district of ....., and a bond with good and sufficient surety, according to the statutes of the United States in such case made and provided; and has made it appear to us that, from prejudice or local influence he will not be able to obtain justice in such state court or any other state court to which the defendant may, under the laws of the state, have the right to remove the said cause, we are willing to remove the said cause, and that the records and proceedings therein should be certified by said superior court and removed into our district court of the United States in and for the ..... district of ....., and do hereby command you to certify and send the records and proceedings aforesaid, with all things concerning the same, to the said district court of the United States, together with this writ, so that you may have the same at the United States courthouse in the city of ....., in the said district of ....., on the .... day of ..... in the said district court to be then and there held, that the said district court may cause to be done thereupon what of right, according to the laws of the United States, should be done.

Witness, the Honorable ....., Judge of said District Court, and the seal of the said District Court hereto affixed, the .... day of ....., ...

.....,

Clerk of said District Court.

§ 296. Remanding Separable Controversy in Class Four.

Pt. § 28, Judicial Code,[k] *36 Stat. at L. 1094, Comp. St. 1911, p. 141, 1912 Supp. F. S. A. v. 1, p. 145.* ". . . *Provided,* That if it further appear that said suit can be fully and justly determined as to the other defendants in the state court, without being affected by such prejudice or local influence, and that no party to the suit will be prejudiced by a

[k] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.

separation of the parties, said district court may direct the suit to be remanded, so far as relates to such other defendants, to the state court, to be proceeded with therein. . . ."

§ 297. Remanding upon Failure to Show Prejudice—Class Four.

Pt. § 28, Judicial Code,[l] *36 Stat. at L. 1094, Comp. St. 1911, p. 141, 1912 Supp. F. S. A. v. 1, p. 145.* ". . . At any time before the trial of any suit which is now pending in any district court, or may hereafter be entered therein, and which has been removed to said court from a state court on the affidavit of any party plaintiff that he had reason to believe and did believe that, from prejudice or local influence, he was unable to obtain justice in said state court, the district court shall, on application of the other party, examine into the truth of said affidavit and the grounds thereof, and, unless it shall appear to the satisfaction of said court that said party will not be able to obtain justice in said state court, it shall cause the same to be remanded thereto. . . ."

§ 298. Remanding in Classes One, Two, Three, and Four.

Pt. § 28, Judicial Code,[m] *36 Stat. at L. 1094, Comp. St. 1911, p. 141, 1912 Supp. F. S. A. v. 1, p. 145.* ". . . Whenever any cause shall be removed from any state court into any district court of the United States, and the district court shall decide that the cause was improperly removed, and order the same to be remanded to the state court from whence it came, such remand shall be immediately carried into execution, and no appeal or writ of error from the decision of the district court so remanding such cause shall be allowed. . . ."

(See § 37, Judicial Code, in § 310, infra.)

§ 299. Common Carrier Employer's Liability Cases Not Removable, Nor for Property Damages, unless $3,000 Involved.

Pt. § 28, Judicial Code,[n] *36 Stat. at L. 1094, Comp. St. 1911, p. 141, 1912 Supp. F. S. A. v. 1, p. 145.* ". . . *Provided,* That no case arising under an act entitled, "An

[l] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.
[m] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.
[n] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.

Act Relating to the Liability of Common Carriers by Railroad to Their Employees in Certain Cases," approved April twenty-second, nineteen hundred and eight, or any amendment thereto, and brought in any state court of competent jurisdiction, shall be removed to any court of the United States."

Act January 20, 1914, ch. 48, amending § 28, Judicial Code, by inserting at the conclusion thereof, "*And provided further,* That no suit brought in any state court of competent jurisdiction against a railroad company, or other corporation, or person, engaged in carrying on the business of a common carrier, to recover damages for delay, loss of, or injury to property received for transportation by such common carrier under section twenty of the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended June twenty-ninth, nineteen hundred and six, April thirteenth, nineteen hundred and eight, February twenty-fifth, nineteen hundred and nine, and June eighteenth, nineteen hundred and ten, shall be removed to any court of the United States where the matter in controversy does not exceed, exclusive of interest and costs, the sum or value of $3,000."

§ 300. Class Five; Suits between Citizens of a State under Land Grants from Different States.

§ *30, Judicial Code,*[o] *36 Stat. at L. 1096, Comp. St. 1911, p. 142, 1912 Supp. F. S. A. v. 1, p. 146.* "If in any action commenced in a state court the title of land be concerned, and the parties are citizens of the same state, and the matter in dispute exceeds the sum or value of three thousand dollars, exclusive of interest and costs, the sum or value being made to appear, one or more of the plaintiffs or defendants, before the trial, may state to the court, and make affidavit if the court require it, that he or they claim, and shall rely upon, a right or title to the land under a grant from a state, and produce the original grant, or an exemplification of it, except where the loss of public records shall put it out of his or their power, and shall move that any one or more of the adverse party inform the court whether he or they claim a right or title to the land under a grant from some other state, the party or parties so required shall give such information, or

[o] For Annotation of this § 30, Judicial Code, see footnote c, ante, our § 262.

otherwise not be allowed to plead such grant or give it in evidence upon the trial. If he or they inform the court that he or they do claim under such grant, any one or more of the party moving for such information may then, on petition and bond, as hereinbefore mentioned in this chapter, remove the cause for trial to the district court of the United States next to be holden in such district; and any one of either party removing the cause shall not be allowed to plead or give evidence of any other title than that by him or them stated as aforesaid as the ground of his or their claim."

§ 301. Class Six; Removal of Suits of Aliens against Officers.

§ 34, Judicial Code,[p] *36 Stat. at L. 1098, Comp. St. 1911, p. 145, 1912 Supp. F. S. A. v. 1, p. 149.* "Whenever a personal action has been or shall be brought in any state court by an alien against any citizen of a state who is, or at the time the alleged action accrued was, a civil officer of the United States, being a nonresident of that state wherein jurisdiction is obtained by the state court, by personal service of process, such action may be removed into the district court of the United States in and for the district in which the defendant shall have been served with the process, in the same manner as now provided for the removal of an action brought in a state court by the provisions of the preceding section."

§ 302. Class Seven; Removal of Civil Rights Cases.

§ 31, Judicial Code,[q] *36 Stat. at L. 1096, Comp. St. 1911, p. 143, 1912 Supp. F. S. A. v. 1, p. 147.* "When any civil suit or criminal prosecution is commenced in any state court, for any cause whatsoever, against any person who is denied or can not enforce in the judicial tribunals of the state, or in the part of the state where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States, or against any officer civil or military, or other person, for any arrest or imprisonment or other trespasses or wrongs made or committed by virtue of or under color of authority

[p] Re-enacting § 644, R. S., Rose's Code, § 160, Foster's Fed. Prac. (4th ed.) p. 1457, Comp. St. 1901, p. 523, 4 F. S. A. 264, which section is repealed by § 297, Judicial Code. In general, Hall et al. v. Great Northern Ry. Co. 197 Fed. 488.

[q] For Annotation of this § 31, Judicial Code, see footnote [b], ante our § 216.

derived from any law providing for equal rights as aforesaid, or for refusing to do any act on the ground that it would be inconsistent with such law, such suit or prosecution may, upon the petition of such defendant, filed in said state court at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed for trial into the next district court to be held in the district where it is pending. Upon the filing of such petition all further proceedings in the state courts shall cease, and shall not be resumed except as hereinafter provided. But all bail and other security given in such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the state court. It shall be the duty of the clerk of the state court to furnish such defendant, petitioning for a removal, copies of said process against him, and of all pleadings, depositions, testimony, and other proceedings in the case. If such copies are filed by said petitioner in the district court on the first day of its session, the cause shall proceed therein in the same manner as if it had been brought there by original process; and if the said clerk refuses or neglects to furnish such copies, the petitioner may thereupon docket the case in the district court, and the said court shall then have jurisdiction therein, and may, upon proof of such refusal or neglect of said clerk, and upon reasonable notice to the plaintiff, require the plaintiff to file a declaration, petition, or complaint in the cause; and, in case of his default, may order a nonsuit and dismiss the case at the costs of the plaintiff, and such dismissal shall be a bar to any further suit touching the matter in controversy. But if, without such refusal or neglect of said clerk to furnish such copies and proof thereof, the petitioner for removal fails to file copies in the district court, as herein provided, a certificate, under the seal of the district court, stating such failure, shall be given, and upon the production thereof in said state court the cause shall proceed therein as if no petition for removal had been filed."

§ 303. Habeas Corpus Proceedings where Civil Rights Denied, and Other Cases.

§ 32, Judicial Code,[r] *36 Stat. at L. 1097, Comp. St. 1911, p. 143, 1912 Supp. F. S. A. v. 1, p. 147.* "When all the

[r] Re-enacting § 642, R. S., Rose's Code, § 1152, Foster's Fed. Prac. (4th ed.) pp. 1200, 1458, 1576, Comp. St. 1901, p. 521, 4 F. S. A. 260, changing the words

acts necessary for the removal of any suit or prosecution, as provided in the preceding section, have been performed, and the defendant petitioning for such removal is in actual custody on process issued by said state court, it shall be the duty of the clerk of said district court to issue a writ of habeas corpus cum causa, and of the marshal, by virtue of said writ, to take the body of the defendant into his custody, to be dealt with in said district court according to law and the orders of said court, or, in vacation, of any judge thereof; and the marshal shall file with or deliver to the clerk of said state court a duplicate copy of said writ."

§ 304. Class Eight; Removal in Cases against Revenue and Congressional Officers.

Pt. § 33, Judicial Code, 36 Stat. at L. 1097, Comp. St. 1911, p. 144, 1912 Supp. F. S. A. v. 1, p. 148.* "When any civil suit or criminal prosecution is commenced in any court of a state against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law; or is commenced against any person holding property or estate by title derived from any such officer, and affects the validity of any such revenue law; or when any suit is commenced against any person for (*sic*) on account of anything done by him while an officer of either House of Congress in the discharge of his official duty, in executing any order of such House, the said suit or prosecution may, at any time before the trial or final hearing thereof, be removed for trial into the district court next to be holden in the district where the same is pending, upon the petition of such defendant to said district court. . . ."

"circuit court," to "district court," which section is repealed by § 297, Judicial Code.

These proceedings are to be used when the state court does not recognize the defendant's right to remove. Ex parte Wells, Fed. Cas. No. 17,386, 3 Woods, 128. In general, Commonwealth of Kentucky v. Wendling, supra.

* Combining § 643, R. S., Rose's Code, §§ 138, 1145, 1146, 1147, 1148, Foster's Fed. Prac. (4th ed.) pp. 43, 1200, 1201, 1462, 1511, 1514, 1528, 1531, 1555, 1571, 1573, Comp. St. 1901, p. 521, 4 F. S. A. 260, and first part of § 8, Sundry Civil Appropriation Act, 18 Stat. at L. 401, 6 F. S. A. 613, which are repealed by § 297, Judicial Code. In general, City of Stanfield v. Umatilla River Water Users.

§ 305. Procedure on Removal under Class Eight—Cases against Revenue or Congressional Officers.

Pt. § 33, Judicial Code,[t] *36 Stat. at L. 1097, Comp. St. 1911, p. 144, 1912 Supp. F. S. A. v. 1, p. 148.* ". . . . the said suit or prosecution (*i. e.,* against revenue or congressional officers) may, at any time before the trial or final hearing thereof, be removed for trial into the district court next to be holden in the district where the same is pending, upon the petition of such defendant to said district court, and in the following manner: Said petition shall set forth the nature of the suit or prosecution and be verified by affidavit, and, together with a certificate signed by an attorney or counselor at law of some court of record of the state where such suit or prosecution is commenced, or of the United States, stating that, as counsel for the petitioner, he has examined the proceedings against him and carefully inquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said district court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office."

FORM 20.

PETITION FOR REMOVAL BY CERTIORARI IN ACTION AGAINST REVENUE OFFICERS.

In the District Court of, etc., of the United States.

[Title of Cause.]

To the Honorable Judges of the District Court of the United States, for the Northern District of California.

The petition of ....., and ....., the defendants above-named, respectfully showeth:

That before the commencement of the suit above-named, and at all the times hereinafter mentioned, the said ..... and ..... were and now are the duly appointed and qualified collector of internal revenue of the United States and deputy internal revenue agent of the United States, respectively, for the first revenue district of California, and the said ..... was at such times and is the United States marshal for the northern district of California, all of your petitioners acting under and by the authority of the internal revenue laws of the United States.

That heretofore, and on the .... day of ....., ..., one ..... was the occupant and lessee of the premises, No. 624 Market street, and the owner and in control of certain personal property therein contained, to wit: certain machinery, tools, implements, apparatus, fixtures, boxes, barrels, tobacco, and cigars, shelving and counters, and other articles and things.

[t] For Annotation of this § 33, Judicial Code, see footnote [s], ante, § 304.

That said ..... on or about said day, and continuously theretofore and thereafter, and while in the occupancy of said premises and in the ownership and control of said personal property as aforesaid, having bonded the same as a cigar and tobacco manufactory, then and there committed certain violations against the said internal revenue laws of the United States in the use and management of said property, to wit, the said ..... did then and there and upon said premises wrongfully, unlawfully, and knowingly, and contrary to the provisions of sections 3372, 3374, 3397, and 3400 of the Revised Statutes of the United States, remove from said manufactory, without the proper stamps denoting the tax therein, tobacco made therein, made false and fraudulent entries of manufactures and sales of tobacco (etc.; other charges specified), and committed other offenses against said revenue laws of the United States.

That thereafter a suit for divorce was instituted in the superior court of the city and county of San Francisco within the state and district aforesaid by ..... against the said ....., her husband, and such proceedings were thereupon had that a decree of said superior court was made and entered granting the divorce and awarding said personal property to said ....., subject to the payment of certain claims alleged to have been established in said court against her, and on the .... day of ....., ..., a receiver, ..., was appointed by said court for said property.

That said receiver thereupon duly qualified and acted as such.

That thereafter the said receiver and ....., the latter having, since the appointment and with the consent of said receiver, bonded the said premises as a cigar and tobacco manufactory, committed certain violations against the said internal revenue laws of the United States, to wit: did then and there and upon the said premises (repeats the charges as above), and committed other offenses against the said revenue laws of the United States.

That heretofore, and on the .... day of ....., your petitioners, ... as such collector, and ..... as such internal revenue agent, seized said personal property for the violations aforesaid of said laws, and thereafter, on the ..... day of ....., said collector delivered the same into the custody of your petitioner ....., as such United States marshal, who now holds the same by virtue of such delivery.

That said receiver has not yet been discharged by said superior court.

That heretofore, and on the .... day of ....., the suit above entitled was commenced in said superior court by said receiver, ... against your petitioners for $20,000 damages for an alleged wrongful conversion of said property by reason of the seizure and acts hereinbefore mentioned.

That at all of such times your petitioners were acting under color of their said respective officers and by authority of the internal revenue laws aforesaid.

That your petitioners have been served with process in said suit, to wit: with summons and complaint inaugurating the same, and said process has been served as aforesaid within this said northern district of California, and that there has not been as yet any trial or final hearing of said suit.

Your petitioners therefore pray that, in pursuance of the statute of said United States in such case made and provided, the said suit, so commenced in said superior court of the city and county aforesaid against your petitioners, may be removed therefrom into this honorable court for trial and determination, and thereupon proceed as a cause originally commenced in the same; and that a writ of certiorari in this behalf, for the record and proceedings heretofore had in said cause in said superior court, may issue from this honorable court to the said superior court of said city and county as by the same statute is provided.

.....
.....
.....

State and Northern District of California ..... } ss.

....., ... and ....., the above-named petitioners, make oath and say that the matters set forth in the foregoing petition are true in substance and in fact, the said ..... making oath upon information and belief.

.....,
(Signatures.)

Subscribed and sworn to, etc.

Certificate.

I, ..., an attorney and counselor at law of the supreme court of said state, and assistant United States attorney for the northern district of California, do hereby certify that as counsel for the petitioners above-named I have examined the proceedings against them in the foregoing petition mentioned, and have carefully inquired into all the matters set forth in said petition, and that I believe the same to be true.

.....
Assistant United States Attorney.

§ 306. Procedure after Removal in Class Eight.

Pt. § 33, Judicial Code,[u] *36 Stat. at L. 1097, Comp. St. 1911, p. 144, 1912 Supp. F. S. A. v. 1, p. 148.* "The cause shall thereupon be entered on the docket of the district court, and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the state court."

[u] For Annotation of this § 33, Judicial Code, see footnote [s], ante, § 304.

§ 307. Certiorari and Habeas Corpus Proceedings in Class Eight—Suits against Revenue or Congressional Officers.

Last Part § 33, Judicial Code,[v] *36 Stat. at L. 1097, Comp. St. 1911, p. 144, 1912 Supp. F. S. A. v. 1, p. 148.* ". . . When the suit is commenced in the state court by summons, subpœna, petition, or other process except capias, the clerk of the district court shall issue a writ of certiorari to the state court, requiring it to send to the district court the record and proceedings in the cause. When it is commenced by capias or by any other similar form or proceeding by which a personal arrest is ordered, he shall issue a writ of habeas corpus cum causa, a duplicate of which shall be delivered to the clerk of the state court, or left at his office, by the marshal of the district or his deputy, or by some person duly authorized thereto; and thereupon it shall be the duty of the state court to stay all further proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the district court, and any further proceedings, trial, or judgment therein in the state court shall be void. If the defendant in the suit or prosecution be in actual custody on mesne process therein, it shall be the duty of the marshal, by virtue of the writ of habeas corpus cum causa, to take the body of the defendant into his custody, to be dealt with in the cause according to law and the order of the district court, or, in vacation, of any judge thereof; and if, upon the removal of such suit or prosecution, it is made to appear to the district court that no copy of the record and proceedings therein in the state court can be obtained, the district court may allow and require the plaintiff to proceed *de novo* and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said district court. On failure of the plaintiff so to proceed, judgment of *non prosequitur* may be rendered against him, with costs for the defendant."

FORM 21.

ORDER FOR WRIT OF CERTIORARI IN ACTION AGAINST REVENUE OFFICERS.

In the District Court, etc., of the United States.

In re the Petition of ..... et al., for Writ }
of Certiorari in ..... v. ..... et al. }
Upon motion of ....., Esq., assistant United States attorney, and on

[v] For Annotation of this § 33, Judicial Code, see footnote *, ante, § 304.

filing petition of ..... and ..... ordered, that a writ of certiorari issue herein to the superior court of the city and county of San Francisco, requiring said court to transmit the record and proceedings in said cause of ..... v. ..... et al., to this court within ten days.

Further ordered, that said writ be served by delivering to said superior court and to the clerk thereof each a certified copy and that ..... be and he hereby is appointed an elisor to serve said writ of certiorari, ... the marshal of this district, being a party to this proceeding.

FORM 22.

Writ of Certiorari in Action against Revenue Officers.

In the District Court of the United States, within and for Northern District of California.

Northern District of California. } ss.
United States of America, }

To the Superior Court in and for the City and County of San Francisco, State of California, Greeting:

Being informed that there is now pending before you a suit wherein ..... is plaintiff, and ..... and ..... are defendants, which said suit is brought for damages alleged to have been suffered by said plaintiff by reason of an alleged wrongful conversion of certain property by said defendants, the said alleged wrongful conversion occurring while said defendants were in discharge of their duties as officers of the United States, under the revenue laws of the United States, and which said suit has been commenced by the service of process, to wit, summons and complaint upon said ..... and ..... and said suit has not yet been heard and determined.

Therefore, we being willing for certain reasons that said case and the records and proceedings heretofore had therein should be certified by said superior court and removed into our district court of the United States in and for the ..... northern district of California do hereby command you that you send, without delay and within ten days, to the said district court as aforesaid, the records and proceedings in said case, so that the said district court may act thereon as of right and according to law ought to be done.

Witness, the Honorable ..... Judge said District Court ..... this ..... day of ..... A. D. .....

Clerk of the United States District Court, in and for the .....
Northern District of California.

[Seal]

§ 308. Proofs of Records When Copies Refused by State Court Clerks.

§ 35, Judicial Code,[w] *36 Stat. at L. 1098, Comp. St. 1911, p. 145, 1912 Supp. F. S. A. v. 1, p. 149.* "In any case where a party is entitled to copies of the records and proceedings in any suit or prosecution in a state court, to be used in any court of the United States, if the clerk of said state court, upon demand, and the payment or tender of the legal fees, refuses or neglects to deliver to him certified copies of such records and proceedings, the court of the United States in which such records and proceedings are needed may, on proof by affidavit that the clerk of said state court has refused or neglected to deliver copies thereof, on demand as aforesaid, direct such record to be supplied by affidavit or otherwise, as the circumstances of the case may require and allow; and thereupon such proceeding, trial, and judgment may be had in the said court of the United States, and all such processes awarded, as if certified copies of such records and proceedings had been regularly before the said court."

§ 309. Enforcement of Return of Record from State to Federal Courts.

§ 39, Judicial Code,[x] *36 Stat. at L. 1099, Comp. St. 1911, p. 146, 1912 Supp. F. S. A. v. 1, p. 150.* "In all causes removable under this chapter, if the clerk of the state court in which any such cause shall be pending shall refuse to any one or more of the parties or persons applying to remove the same, a copy of the record therein, after tender of legal fees for such copy, said clerk so offending shall, on conviction thereof in the district court of the United States to which said action or proceeding was removed, be fined not more than one thousand dollars, or imprisoned not more than one year, or both. The district court to which any cause shall be removable under this chapter shall have power to issue a writ of certiorari to said state court commanding said state court to make return of the record in any such cause removed as aforesaid, or in which any one or more of the plaintiffs or defendants have complied with the provisions of this chapter for the

[w] Re-enacting § 645, R. S., Rose's Code, §§ 396, 1805, Comp. St. 1901, p. 523, 4 F. S. A. 264, which section is repealed by § 297, Judicial Code. In general, Sherman v. Grinnell, 123 U. S. 679, 31 L. ed. 278, 8 Sup. Ct. Rep. 260.

[x] Re-enacting 18 Stat. at L. 472, Comp. St. 1901, p. 512, 4 F. S. A. 378, which statute is repealed by § 297, Judicial Code. In general, Goldberg, Bowen & Co. Inc. v. German Ins. Co. of Freeport, Ill., 152 Fed. 831.

removal of the same, and enforce said writ according to law. If it shall be impossible for the parties or persons removing any cause under this chapter, or complying with the provisions for the removal thereof, to obtain such copy, for the reason that the clerk of said state court refuses to furnish a copy, on payment of legal fees, or for any other reason, the district court shall make an order requiring the prosecutor in any such action or proceeding to enforce forfeiture or recover penalty, as aforesaid, to file a copy of the paper or proceeding by which the same was commenced, within such time as the court may determine; and in default thereof the court shall dismiss the said action or proceeding; but if said order shall be complied with, then said district court shall require the other party to plead, and said action or proceeding shall proceed to final judgment. The said district court may make an order requiring the parties thereto to plead *de novo;* and the bond given, conditioned as aforesaid, shall be discharged so far as it requires copy of the record to be filed as aforesaid."

FORM 23.

WRIT OF CERTIORARI UNDER § 39, JUDICIAL CODE.

The President of the United States of America to the Judge of the [describe the court], Greeting:

Whereas, it has been represented to the district court of the United States for the district of ....., that a certain suit was commenced in the [state court], wherein A, a citizen and resident of the state of ..... was plaintiff, and Z, a citizen of the state of ..... was defendant, and that the said Z duly filed in the said state court his petition for the removal of said cause into the said district court of the United States, and filed with said petition the bond with surety required by law, and that the clerk of said state court has refused to said petitioner for the removal of said cause a copy of the record therein, though his legal fees therefor were tendered by said petitioner.

You, therefore, are hereby commanded that you forthwith certify or cause to be certified to the said district court of the United States for the ....., district of ....., a full, true, and complete copy of the record and proceedings in said cause in which the said petition for removal was filed as aforesaid, plainly and distinctly, and in as full and ample a manner as the same now remain before you, together with this writ; so that the said district court may be able to proceed thereon and do what shall appear to them of right ought to be done. Herein fail not.

Witness, the Honorable ..... Judge of said district court, and the seal of the said ..... court hereto affixed, the .... day of ....., ...

.....,

Clerk of the said District Court.

§ 310. Remand or Dismissal of Case Fraudulently or Improperly Removed.

§ 37, Judicial Code,[y] *36 Stat. at L. 1098, Comp. St. 1911, p. 146, 1912 Supp. F. S. A. v. 1, p. 149.* "If in any suit commenced in a district court, or removed from a state court to a district court of the United States, it shall appear to the satisfaction of said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this act, the said district court shall proceed no farther therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just."

FORM 24.

MOTION TO REMAND ON THE GROUND OF NO JURISDICTION, UNDER § 37, JUDICIAL CODE.

[Title of Federal Court and Cause.]

Now comes the plaintiff and moves this court to remand the above-entitled cause to the superior court in and for the county of ....., in the state of ....., on the ground that this court is without jurisdiction to hear and determine the cause. (Set out in what respects jurisdiction is lacking.)

.....,
Attorneys for plaintiff.

FORM 25.

ORDER REMANDING CAUSE.

At a Stated Term, etc.

Present, The Honorable, etc.

[Title of Federal Court and Cause.]

Plaintiff's motion to remand heretofore heard and submitted to the court for consideration and decision having been fully considered, and the opinion of the court having been delivered, it is in accordance with said opinion.

[y] Re-enacting 18 Stat. at L. 472, Foster's Fed. Prac. (4th ed.) pp. 449, 958, 1016, 1022, 1457, 1614, Comp. St. 1901, p. 511, 4 F. S. A. 371, which section is repealed by § 297, Judicial Code. In general, Atlantic Dynamite Co. v. Reger et al. 200 Fed. 1002.

Ordered that said motion be, and the same is, granted, and that this cause be, and the same is hereby, remanded to the superior court of the county of Amador, state of California, for further proceedings.

....., Judge United States District Court.

§ 311. Provisional Remedies of State Court Preserved—Bonds Given in State Suit—Valid on Removal.

§ *36, Judicial Code,*[z] *36 Stat. at L. 1098, Comp. St. 1911, pp. 145, 146, 1912 Supp. F. S. A. v. 1, p. 149.* "When any suit shall be removed from a state court to a district court of the United States, any attachment or sequestration of the goods or estate of the defendant had in such suit in the state court shall hold the goods or estate so attached or sequestered to answer the final judgment or decree in the same manner as by law they would have been held to answer final judgment or decree had it been rendered by the court in which said suit was commenced. All bonds, undertakings, or security given by either party in such suit prior to its removal shall remain valid and effectual notwithstanding said removal; and all injunctions, orders, and other proceedings had in such suit prior to its removal shall remain in full force and effect until dissolved or modified by the court to which such suit shall be removed."

§ 312. Proceedings after Removal—Generally.

§ *38, Judicial Code,*[a] *36 Stat. at L. 1098, Comp. St. 1911, p. 146, 1912 Supp. F. S. A. v. 1, p. 150.* "The district court of the United States shall, in all suits removed under the provisions of this chapter, proceed therein as if the suit had been originally commenced in said district court, and the same proceedings had been taken in such suit in said district court as shall have been had therein in said state court prior to its removal."

[z] Drawn from 18 Stat. at L. 471, Foster's Fed. Prac. (4th ed.) p. 1456, Comp. St. 1901, p. 511, 4 F. S. A. 370, which section superseded § 646, R. S. Comp. St. 1901, p. 523, 4 F. S. A. 264, which are repealed by § 297, Judicial Code. In general, Wolf et al. v. Cook et al. 40 Fed. 432.

[a] Re-enacting 18 Stat. at L. 472, Comp. St. 1901, p. 512, 4 F. S. A. 378, which section is repealed by § 297, Judicial Code. In general, Leo v. Union Pac. Ry. Co. 19 Fed. 283, and another, Leo v. Union Pac. R. Co. 17 Fed. 273.

CHAPTER 11.

REMOVAL FROM STATE COURT OF LAST RESORT TO UNITED STATES SUPREME COURT BY WRIT OF ERROR—JURISDICTION.

Sec.

330. In General.
331. Statute Regulating Removal by Writ of Error.
332. Only Appellate Review of State Courts.
333. What Judgment and Decrees Removable.
334. Classification of Cases Reviewable.
335. Decision of State Court against the Validity of a Federal Treaty, Statute, or Authority—Their Validity Having Been Drawn in Question.
336. Decisions in Favor of State Statutes whose Authority Drawn in Question as Repugnant to the Federal Constitution, Laws, or Treaties.
337. Decision against Right, Title, Privilege, or Immunity Claimed under United States Constitution, Treaty, Statute, Authority, or Commission.
338. General Propositions Flowing from § 237, Judicial Code.
339. Procedure on Removal from State Courts of Last Resort.

§ 330. In General. In addition to the removal of causes from state to Federal courts as treated in chapter 10, cases may be removed to the Supreme Court of the United States under § 237, Judicial Code, after they have been finally decided by the highest state court having jurisdiction of the cause.

The grounds of removal under this section are more restricted than those previously enumerated, extending only to cases in which the decision of a state court is adverse to the Federal Constitution, treaties, laws, or authority, or to a right, title, privilege, or immunity claimed thereunder, the purpose of the review by the Supreme Court being to preclude any possibility of unconstitutional legislation by state courts.

The procedure upon removal under this section is identical with that upon writ of error to the Federal courts,[1] and the

[1] Our § 825, post.

discussion of appellate procedure at law in chapter 28, applies to procedure here.

§ 331. Statute Regulating Removal by Writ of Error.

§ 237, Judicial Code,[a] *36 Stat. at L. 1156, Comp. St. 1911, p. 227, 1912 Supp. F. S. A. v. 1, p. 230.* "A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of or an authority exercised under any state, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity; or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States, and the decision is against the title, right, privilege, or immunity especially set up or claimed, by either party, under such Constitution, treaty, statute, commission, or authority, may be re-examined and reversed or affirmed in the Supreme Court upon a *writ of error.* The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgments or decree of such state court, and may at their discretion award execution or remand the same to the court from which it was removed by the writ."

§ 332. Only Appellate Review of State Courts. This section re-enacts § 709, R. S., the language of that section being unchanged.

It provides the only method by which the judgments or decrees of the highest courts of the states having jurisdiction of the suits can be reviewed by the United States Supreme Court, and consequently writs of error can only issue to the state courts in cases

[a] Re-enacting § 709, R. S., Rose's Code, §§ 2120, 2018, Foster's Fed. Prac. (4th ed.) pp. 1588, 1589, 1628, 1629, 1963, 1968, 1999, 2001, 2044, 2132, 2158, Comp. St. 1901, p. 575, 4 F. S. A. 467, which section is repealed by § 297, Judicial Code. Writ of Error, see chap. 28, infra.

within its purview.[2] Stipulation by parties to the cause cannot confer jurisdiction upon the Supreme Court.[3]

§ 333. What Judgment and Decrees Removable. It is only *"final* judgments or decrees[4] of the *highest court of a state in which a decision of the suit could be had,"* that are reviewable under this section. This does not limit the jurisdiction to the highest court of the state, but only to the highest court having jurisdiction of the particular cause to be reviewed.[5]

If, however, the state court to which the writ of error is to be addressed is not the highest court of the state, the record must affirmatively show that a decision of the case could not have been had in such court.[6] "Any suit," within the meaning of this section, has been held to include a proceeding for mandamus;[7] a proceeding for a writ of prohibition to restrain a municipal corporation from carrying an ordinance into effect;[8] but an order made by a judge in chambers, remanding a prisoner in habeas corpus proceedings, is not reviewable.[9]

[2] Cohens v. Virginia, 6 Wheat. 264, 5 L. ed. 257; Verden v. Coleman, 22 How. 192, 16 L. ed. 336; Dower v. Richards, 151 U. S. 658, 38 L. ed. 305, 14 Sup. Ct. Rep. 452, 17 Mor. Min. Rep. 704; Capitol Nat. Bank v. Cadiz Nat. Bank, 172 U. S. 425, 43 L. ed. 502, 19 Sup. Ct. Rep. 202.

[3] Mills v. Brown, 16 Pet. 525, 10 L. ed. 1055.

[4] McKnight v. James, 155 U. S. 687, 39 L. ed. 310, 15 Sup. Ct. Rep. 248; Great Western Tel. Co. v. Burnham, 162 U. S. 341, 40 L. ed. 991, 16 Sup. Ct. Rep. 850.

[5] Sullivan v. Texas, 207 U. S. 416, 52 L. ed. 274, 28 Sup. Ct. Rep. 215; Bacon v. Texas, 163 U. S. 207, 41 L. ed. 132, 16 Sup. Ct. Rep. 1023; Fisher v. Perkins, 122 U. S. 522, 30 L. ed. 1192, 7 Sup. Ct. Rep. 1227; Great Western Tel. Co. v. Burnham, 162 U. S. 339, 40 L. ed. 991, 16 Sup. Ct. Rep. 850; Clark v. Com. 128 U. S. 395, 32 L. ed. 487, 9 Sup. Ct. Rep. 113; Gregory v. McVeigh, 23 Wall. 294, 23 L. ed. 156; Stanley v. Schwalby, 162 U. S. 255, 40 L. ed. 960, 16 Sup. Ct. Rep. 754; Williams v. Bruffy, 102 U. S. 248, 26 L. ed. 135; Downham v. Alexandria, 9 Wall. 659, 19 L. ed. 807; Tinsley v. Anderson, 171 U. S. 101, 43 L. ed. 91, 18 Sup. Ct. Rep. 805; Pepke v. Cronan, 155 U. S. 100, 39 L. ed. 84, 15 Sup. Ct. Rep. 34; Newport Lt. Co. v. Newport, 151 U. S. 527, 38 L. ed. 259, 14 Sup. Ct. Rep. 1150, but see Olney v. Arnold, 3 Dall. 308, 1 L. ed. 614, as to what is "highest court of State."

[6] Fisher v. Perkins, 122 U. S. 522, 30 L. ed. 1192, 7 Sup. Ct. Rep. 1227; Mullen v. Western Union Beef Co. 173 U. S. 116, 43 L. ed. 635, 19 Sup. Ct. Rep. 404.

[7] McPherson v. Blacker, 146 U. S. 1, 36 L. ed. 869, 13 Sup. Ct. Rep. 3; Hartman v. Greenhow, 102 U. S. 672, 26 L. ed. 271; American Exp. Co. v. Michigan, 177 U. S. 404, 44 L. ed. 823, 20 Sup. Ct. Rep. 695.

[8] Weston v. Charlestown, 2 Pet. 449, 7 L. ed. 481.

[9] McKnight v. James, 155 U. S. 685, 39 L. ed. 310, 15 Sup. Ct. Rep. 248. See also Holmes v. Jennison, 14 Pet. 540, 10 L. ed. 579.

§ 334. Classification of Cases Reviewable. It is to be noted that this section confers appellate jurisdiction in three classes of cases:

1. Where the decision of the state court is *against* the validity of a treaty or statute of, or an authority exercised under the United States, their validity having been drawn in question. (§ 335.)

2. Where the decision of the state court is *in favor* of the validity of a statute or authority exercised under any state, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, the validity of such statute or authority having been drawn in question. (§ 336.)

3. Where the decision of the state court is *against* the title, right, privilege, or immunity claimed under the Constitution or any treaty or statute of, or commission held, or authority exercised under the United States. (§ 337.)

§ 335. Decision of State Court against the Validity of a Federal Treaty, Statute, or Authority, Their Validity Having Been Drawn in Question. The state court must have decided *against* the validity of the treaty or statute; otherwise there is no right of review.[10]

The validity of the statute, treaty, or authority must be "drawn in question" if there is to be a review of the decision thereon by writ of error. In order to be "drawn in question," within the meaning of the section, it is not enough that rights claimed under a treaty or statute are controverted, or that acts are done which dispute the authority.[11] But the validity of a statute is "drawn

[10] Gordon v. Coldcleugh, 3 Cranch, 268, 2 L. ed. 436; McIntire v. Wood, 7 Cranch, 504, 3 L. ed. 420; McClung v. Silliman, 6 Wheat. 598, 5 L. ed. 340; Williams v. Norris, 12 Wheat. 117, 6 L. ed. 571; Montgomery v. Hernandez, 12 Wheat. 129, 6 L. ed. 575; Menard v. Aspasia, 5 Pet. 505, 8 L. ed. 207; Strodler v. Baldwin, 9 How. 261, 13 L. ed. 130; Ableman v. Booth, 21 How. 506, 16 L. ed. 169; Reddall v. Bryan, 24 How. 420, 16 L. ed. 740; Ryan v. Thomas, 4 Wall. 603, 18 L. ed. 460; Baker v. Baldwin, 187 U. S. 61, 47 L. ed. 75, 23 Sup. Ct. Rep. 19.

[11] Kennard v. Nebraska, 186 U. S. 304, 46 L. ed. 1175, 22 Sup. Ct. Rep. 879; Florida Cent. R. Co. v. Bell, 176 U. S. 321, 44 L. ed. 486, 20 Sup. Ct. Rep. 399; Blackburn v. Portland Gold Min. Co. 175 U. S. 571, 44 L. ed. 276, 20 Sup. Ct. Rep. 222, 20 Mor. Min. Rep. 358; Telluride Power Trans. Co. v. Rio G. W. R. Co. 175 U. S. 639, 44 L. ed. 305, 20 Sup. Ct. Rep. 245;

in question" whenever the power to enact it as it is by its terms, or is made to read by construction, is fairly open to denial and is denied.[12] "Authority exercised under the United States" must be real and existing,—not merely asserted. "Authority," as used in the section, stands upon the same footing as a treaty or statute; and if from the record it appears that the authority did not exist or was not in force, the decision of the state court will not be reviewed.[13] But the validity—not the exercise of the authority merely—must be drawn in question.[14]

And there is a palpable difference between the denial of the validity of the authority and a denial of a title, privilege, or right or immunity claimed under it. A denial of the latter does not present a Federal question.[15] "Authority," as used in the section, is construed to mean personal authority, and not an abstract right created under a statute.[16] Consequently this clause has been applied in those cases in which the authority exercised by a public officer of the United States has been called in question,—not where a general right is set up under a statute.[17] Thus, a decision against the validity of the authority of the President of

Columbia W. P. Co. v. Col. E. S. R. C. 172 U. S. 475, 43 L. ed. 521, 19 Sup. Ct. Rep. 247; Borgmeyer v. Idler, 159 U. S. 408, 40 L. ed. 199, 16 Sup. Ct. Rep. 34; Bushnell v. Crooke Min., etc., Co. 148 U. S. 682, 37 L. ed. 610, 13 Sup. Ct. Rep. 771; Cook County v. Calumet C., etc., Co. 138 U. S. 635, 34 L. ed. 1110, 11 Sup. Ct. Rep. 435; Ferry v. King County, 14 U. S. 668; Baltimore Ry. Co. v. Hopkins, 130 U. S. 210, 32 L. ed. 908, 9 Sup. Ct. Rep. 503.

[12] Baltimore Ry. Co. v. Hopkins, 130 U. S. 210, 32 L. ed. 908, 9 Sup. Ct. Rep. 503; Miller v. Cornwall Ry. Co. 168 U. S. 131, 42 L. ed. 409, 18 Sup. Ct. Rep. 34.

[13] Millinger v. Hartupee, 6 Wall. 258, 18 L. ed. 829.

[14] Walsh v. Columbus R. Co. 176 U. S. 469, 44 L. ed. 548, 20 Sup. Ct. Rep. 393; Hamblin v. Western Land Co. 147 U. S. 531, 37 L. ed. 267, 13 Sup. Ct. Rep. 353; New Orleans v. New Orleans Water Wks. Co. 142 U. S. 79, 35 L. ed. 943, 12 Sup. Ct. Rep. 142; Millinger v. Hartupee, 6 Wall. 258, 18 L. ed. 829.

[15] Baltimore R. Co. v. Hopkins, 130 U. S. 210, 32 L. ed. 908, 9 Sup. Ct. Rep. 503; Abbot v. Tacoma Bank of Commerce, 175 U. S. 409, 44 L. ed. 217, 20 Sup. Ct. Rep. 153; Cook County of Calumet Canal Co. 138 U. S. 636, 34 L. ed. 1110, 11 Sup. Ct. Rep. 435; United States v. Lynch, 137 U. S. 280, 34 L. ed. 700, 11 Sup. Ct. Rep. 114; Clough v. Curtis, 134 U. S. 361, 33 L. ed. 945, 10 Sup. Ct. Rep. 573.

[16] Telluride Power Transmission Company v. Rio Grande Western R. Co. 175 U. S. 639, 44 L. ed. 305, 20 Sup. Ct. Rep. 245.

[17] McGuire v. Com. 3 Wall. 387, 18 L. ed. 226; Millinger v. Hartupee, 6 Wall. 258, 18 L. ed. 829; Daniels v. Tearney, 102 U. S. 415, 26 L. ed. 187; Sharpe v. Doyle, 102 U. S. 686, 26 L. ed. 277; Buck v. Colbath, 3 Wall. 334, 18 L. ed. 257.

the United States to approve a deed of Indian treaty lands is reviewable under this clause;[18] as is the decision of a state court denying the claim of a disbursing officer of the United States that money in his hands due United States seamen could not be attached by process out of a state court.[19] A refusal by a state court to give effect to a judgment of a United States court rendered upon the point in dispute, with jurisdiction of the case and of the parties, involves the denial of the validity of an authority exercised under the United States, and may be reviewed by the Supreme Court.[20] A judgment of the supreme court of the District of Columbia is subject to review under this clause.[21]

§ 336. Decisions in Favor of State Statutes whose Authority Drawn in Question as Repugnant to the Federal Constitution, Laws, or Treaties. It is only the statute of a *state* which can be re-examined under this clause,[22] and a statute of a territory is not a statute of a state, nor is it an act of Congress, nor a statute of the United States, within the meaning of this section, and consequently the decision of the state courts, that the law of a territory is not repugnant to the Constitution of the United States, is not reviewable.[23]

In considering this clause, it is necessary, as it was in considering the preceding one, to determine when the validity of a treaty, statute, or authority is "drawn in question." In order to give the Supreme Court jurisdiction to review a judgment rendered by the highest court of this state in favor of the validity of a statute or an authority exercised under a state, the validity of the statute

[18] Pickering v. Lomax, 145 U. S. 310, 36 L. ed. 716, 12 Sup. Ct. Rep. 860.
[19] Buchanan v. Alexander, 4 How. 20, 11 L. ed. 857.
[20] Mutual L. Ins. Co. v. McGrew (1903), 188 U. S. 311, 47 L. ed. 480, 23 Sup. Ct. Rep. 375, 63 L.R.A. 33; Hancock Nat. Bank. v. Farmun, 176 U. S. 640, 44 L. ed. 619, 20 Sup. Ct. Rep. 506; Dupasseur v. Rochereau, 21 Wall. 130, 22 L. ed. 588; Pittsburgh, etc., R. Co. v. Long Island L. & T. Co. 172 U. S. 493, 43 L. ed. 528, 19 Sup. Ct. Rep. 238; Central Nat. Bank v. Stevens, 171 U. S. 109, 43 L. ed. 97, 18 Sup. Ct. Rep. 837; Cresent City Live Stock Co. v. Butcher's Union Slaughter House Co. 120 U. S. 141, 30 L. ed. 614, 7 Sup. Ct. Rep. 472; Palmer v. Hussey, 119 U. S. 96, 30 L. ed. 362, 7 Sup. Ct. Rep. 158.
[21] Embry v. Palmer, 107 U. S. 3, 27 L. ed. 346, 2 Sup. Ct. Rep. 25.
[22] Scott v. Jones, 5 How. 343, 12 L. ed. 181.
[23] Messenger v. Mason, 10 Wall. 507, 19 L. ed. 1028; Miners Bank v. Iowa, 12 How. 1, 13 L. ed. 867.

or authority must have been drawn in question upon the ground of their being repugnant to the Constitution, laws, or treaties of the United States. When no such ground has been presented to or considered by the courts of the state, it cannot be said that those courts have disregarded the Constitution of the United States, and the Supreme Court has no jurisdiction.[24] Whether or not the Constitution of a state is violated by state law is not within the scope of this clause.[25] Nor is the question of the correct construction of a state law, when its validity is admitted.[26] A decision in the state court must be *in favor* of the validity of the statute of or the authority exercised under the statutes drawn in question.[27] But it is not necessary that the state law be either in the form of a statute enacted by the legislature of the state or in the form of a Constitution established by people of the state; a by-law or ordinance of a municipal corporation may be such an exercise of legislative power that it may be properly considered as a law within the meaning of this clause of the section.[28]

[24] Scudder v. Coler, 175 U. S. 32, 44 L. ed. 62, 20 Sup. Ct. Rep. 26; Columbus Water Power Co. v. Columbia Elec. Street. R. R. Co. 172 U. S. 475, 43 L. ed. 521, 19 Sup. Ct. Rep. 247 (cases therein cited); Miller v. Cornwall R. Co. 168 U. S. 131, 42 L. ed. 409, 18 Sup. Ct. Rep. 34; Levy v. Supreme Court, 167 U. S. 175, 42 L. ed. 126, 17 Sup. Ct. Rep. 769; Adams v. Preston, 22 How. 473, 16 L. ed. 273; Murdock v. Memphis, 20 Wall. 590, 22 L. ed. 429; Michigan Central R. R. Co. v. Michigan Southern R. R. Co. 19 How. 378, 15 L. ed. 689.

[25] Calder v. Bull, 3 Dall. 386, 1 L. ed. 648; Jackson v. Lamphire, 3 Pet. 280, 7 L. ed. 679; Withers v. Buckley, 20 How. 84, 15 L. ed. 816; Congdon Mining Co. v. Goodman, 2 Black, 574, 17 L. ed. 257; Salomon's v. Graham, 15 Wall. 208, 21 L. ed. 37; Leeper v. Texas, 139 U. S. 462, 35 L. ed. 225, 11 Sup. Ct. Rep. 577; Murray v. Louisiana, 163 U. S. 101, 41 L. ed. 87, 16 Sup. Ct. Rep. 990; East Hartford v. Hartford Bridge Co. 10 How. 511, 13 L. ed. 518; Baldwin v. Kansas, 129 U. S. 52, 32 L. ed. 640, 9 Sup. Ct. Rep. 193; Missouri v. Harris, 144 U. S. 210, 36 L. ed. 407, 12 Sup. Ct. Rep. 838; Sage v. Louisiana Board of Liquidation, 144 U. S. 647, 36 L. ed. 577, 12 Sup. Ct. Rep. 755; Powell v. Brownsley Co. 150 U. S. 433, 37 L. ed. 1134, 14 Sup. Ct. Rep. 166; In re Kemmler, 136 U. S. 436, 34 L. ed. 519, 10 Sup. Ct. Rep. 930; McElvaine v. Brush, 142 U. S. 155, 35 L. ed. 971, 12 Sup. Ct. Rep. 156.

[26] Congdon Mining Co. v. Goodman, 2 Black, 574, 17 L. ed. 257; Scott v. Jones, 5 How. 343, 12 L. ed. 181; Lessiuer v. Price, 12 How. 59, 13 L. ed. 893; Commercial Bank v. Buckingham, 5 How. 317, 12 L. ed. 169; Smith v. Hunter, 7 How. 738, 12 L. ed. 894; Grand Gulf R. Co. v. Marshall, 12 How. 165, 13 L. ed. 938; Ferry v. King Co. 141 U. S. 668, 35 L. ed. 895, 12 Sup. Ct. Rep. 128; Snell v. Chicago, 152 U. S. 191, 38 L. ed. 408, 14 Sup. Ct. Rep. 489.

[27] McKinney v. Carroll, 12 Pet. 66, 9 L. ed. 1002; Commonwealth Bank v. Griffith, 14 Pet. 56, 10 L. ed. 352; Walker v. Taylor, 5 How. 64, 12 L. ed. 52.

[28] Bacon v. Texas, 163 U. S. 207, 41 L. ed. 132, 16 Sup. Ct. Rep. 1023;

§ 337. Decision against Right, Title, Privileges, or Immunity Claimed under United States Constitution, Treaty, Statute, Authority, or Commission. To give the Supreme Court jurisdiction in this class of cases the right, title, or immunity which is denied by the decisions of the state court must grow out of the Constitution or a treaty or statute of the United States which has been relied upon.[29]

The title, right, privilege, or immunity claimed under the Constitution or treaty or statute of or commission held under the United States, with possibly some rare exceptions, must be specially set up or claimed in the court below in order to vest the Supreme Court with jurisdiction.[30] An exception to this rule is found in a case where the validity of a treaty or statute of the United States is raised and a decision is against it, or where the validity of a state statute is drawn in question and the decision is in favor of its validity. In such cases the Federal question need not be specifically set up if it appears in the record, was decided and such decision was necessarily involved in the case so that it could not have been determined without deciding such question.[31]

New Orleans Water Works Co. v. Louisiana Sugar Refining Co. 125 U. S. 18, 31 L. ed. 607, 8 Sup. Ct. Rep. 741.

[29] Miller v. Lancaster Bank, 106 U. S. 542, 27 L. ed. 289, 1 Sup. Ct. Rep. 536; Long v. Converse, 91 U. S. 105, 23 L. ed. 233; Hale v. Gaines, 22 How. 160, 16 L. ed. 269; Wynn v. Morris, 20 How. 5, 15 L. ed. 800; Henderson v. Tennessee, 10 How. 323, 13 L. ed. 439; Verden v. Coleman, 1 Black, 472, 17 L. ed. 161; Montgomery v. Hernandez, 12 Wheat. 129, 6 L. ed. 575.

[30] Home for Incurables v. New York, 187 U. S. 155, 47 L. ed. 117, 63 L.R.A. 329, 23 Sup. Ct. Rep. 84; Bollin v. Nebraska, 176 U. S. 83, 44 L. ed. 382, 20 Sup. Ct. Rep. 287; Telluride Power Transmission Co. v. Rio Grande Western Railway Co. 175 U. S. 639, 44 L. ed. 305, 20 Sup. Ct. Rep. 245; Columbia Water Power Co. v. Columbia Electric Street Railway Co. 172 U. S. 475, 43 L. ed. 521, 19 Sup. Ct. Rep. 247; Levy v. Superior Court, 167 U. S. 175, 42 L. ed. 126, 17 Sup. Ct. Rep. 769; Oxley Stave Co. v. Butler Co. 166 U. S. 648, 41 L. ed. 1149, 17 Sup. Ct. Rep. 709; Chicago, etc., R. Co. v. Chicago, 164 U. S. 454, 41 L. ed. 511, 17 Sup. Ct. Rep. 129; Powell v. Brunswick Co. 150 U. S. 433, 37 L. ed. 1134, 14 Sup. Ct. Rep. 166; Roby v. Colehour, 146 U. S. 153, 36 L. ed. 922, 13 Sup. Ct. Rep. 47; Leeper v. Texas, 139 U. S. 462, 35 L. ed. 225, 11 Sup. Ct. Rep. 577; Baldwin v. Kansas, 129 U. S. 52, 32 L. ed. 640, 9 Sup. Ct. Rep. 193; Chappell v. Bradshaw, 128 U. S. 132, 32 L. ed. 369, 9 Sup. Ct. Rep. 40; French v. Hopkins, 124 U. S. 524, 31 L. ed. 536, 8 Sup. Ct. Rep. 589; Spies v. Illinois, 123 U. S. 131, 31 L. ed. 80, 8 Sup. Ct. Rep. 21; Armstrong v. Treasurer, 16 Pet. 281, 10 L. ed. 965; Missouri R. Co. v. Rock, 4 Wall. 177, 18 L. ed. 381.

[31] Miller v. Nicholls, 4 Wheat. 311, 4 L. ed. 578; Willson v. Blackbird Creek Marsh Co. 2 Pet. 245, 7 L. ed. 412; Satterlee v. Mathewson, 2 Pet. 380, 7 L. ed. 458; Fisher v. Cockerell, 5 Pet. 248, 8 L. ed. 114; Crowell v.

Ordinarily, however, the right, title, privilege, or immunity relied upon must not only be specially set up or claimed, but it must be so claimed or set up at the proper time and in the proper manner.[32] The question must be raised in the state court by the individual who seeks to have it reviewed in the Supreme Court. The fact that someone else has raised it in the state court is of no avail to the appellant or plaintiff in error, if he himself fail to raise it in the court below.[33] Moreover the right, title, privilege, or immunity must be personal to the appellant or plaintiff in error.[34] A state officer, testing the constitutionality of a state law solely in the interest of third persons, has no standing to re-

Randell, 10 Pet. 368, 9 L. ed. 458; Harris v. Dennie, 3 Pet. 292, 7 L. ed. 683; Farney v. Towle, 1 Black, 350, 17 L. ed. 216; Hoyt v. Shelden, 1 Black, 518, 17 L. ed. 65; Missouri, etc., R. Co. v. Rock, 4 Wall. 177, 18 L. ed. 381; Furman v. Nicnol, 8 Wall. 44, 19 L. ed. 370; Columbia Water Power Co. v. Columbia Elec. St. R. R. Co. 172 U. S. 475, 43 L. ed. 521, 19 Sup. Ct. Rep. 247; Kaukauna Water Power Co. v. Green Bay, etc., Canal Co. 142 U. S. 254, 35 L. ed. 1004, 12 Sup. Ct. Rep. 173; Hickie v. Starke, 1 Pet. 94, 7 L. ed. 67; Bridge Prop. v. Hoboken Land Co. 1 Wall. 116, 17 L. ed. 571; Yazoo, etc., Co. v. Adams, 180 U. S. 1, 45 L. ed. 395, 21 Sup. Ct. Rep. 240; Telluride Power Transmission Co. v. Rio Grande Western Railway Co. 175 U. S. 639, 44 L. ed. 305, 20 Sup. Ct. Rep. 245; Green Bay, etc., Canal Co. v. Patten Paper Co. 172 U. S. 58, 43 L. ed. 364, 19 Sup. Ct. Rep. 97; Chicago, etc., R. R. Co. v. Chicago, 166 U. S. 226, 41 L. ed. 979, 17 Sup. Ct. Rep. 581; Sayward v. Denny, 158 U. S. 180, 39 L. ed. 941, 15 Sup. Ct. Rep. 777; Powell v. Brunswick County 150 U. S. 440, 37 L. ed. 1134, 14 Sup. Ct. Rep. 166; Davis v. Packard, 6 Pet. 41, 8 L. ed. 312.

[32] Mutual Life Ins. Co. v. McGrew, 188 U. S. 292, 47 L. ed. 480, 23 Sup. Ct. Rep. 375, 66 L.R.A. 33; Sayward v. Denney, 158 U. S. 180, 39 L. ed. 941, 15 Sup. Ct. Rep. 777; Morrison v. Watson, 154 U. S. 111, 38 L. ed. 927, 14 Sup. Ct. Rep. 995; Miller v. Texas, 153 U. S. 535, 38 L. ed. 812, 14 Sup. Ct. Rep. 874; Maxwell v. Newbold, 18 How. 515, 15 L. ed. 508; Hoyt v. Sheldon, 1 Black, 518, 17 L. ed. 65.

[33] DeLamar's Nevada Gold Mining Co. v. Nesbitt, 177 U. S. 523, 44 L. ed. 872, 20 Sup. Ct. Rep. 715; Texas, etc., R. Co. v. Johnson, 151 U. S. 81, 38 L. ed. 81, 14 Sup. Ct. Rep. 250; Missouri v. Andriano, 138 U. S. 496, 34 L. ed. 1012, 11 Sup. Ct. Rep. 385; Linton v. Stanton, 12 How. 423, 13 L. ed. 1050; Stradler v. Baldwin, 9 How. 261, 13 L. ed. 130; Manning v. French, 133 U. S. 186, 33 L. ed. 582, 10 Sup. Ct. Rep. 258; McNulta v. Lochridge, 141 U. S. 327, 35 L. ed. 796, 12 Sup. Ct. Rep. 11; Kizer v. Texarkana R. R. Co. 179 U. S. 199, 45 L. ed. 152, 21 Sup. Ct. Rep. 100; Conde v. York, 168 U. S. 642, 42 L. ed. 611, 18 Sup. Ct. Rep. 234; Northern P. R. Co. v. Patterson, 154 U. S. 130, 38 L. ed. 934, 14 Sup. Ct. Rep. 977; Ludeling v. Chaffe, 143 U. S. 301, 36 L. ed. 313, 12 Sup. Ct. Rep. 439; Giles v. Little, 134 U. S. 645, 33 L. ed. 1062, 10 Sup. Ct. Rep. 623; Miller v. Lancaster Bank, 106 U. S. 542, 27 L. ed. 289, 1 Sup. Ct. Rep. 536; Long v. Converse, 91 U. S. 105, 23 L. ed. 233; Owings v. Norwood, 5 Cranch, 344, 3 L. ed. 120; Montgomery v. Hernandez, 12 Wheat. 129, 6 L. ed. 575; Hale v. Gaines, 22 How. 144, 16 L. ed. 264; Verden v. Coleman, 1 Black, 472, 17 L. ed. 161; Sully v. American National Bank, 178 U. S. 289, 44 L. ed. 1072, 20 Sup. Ct. Rep. 935; Smith v. Indiana, 191 U. S. 138, 48 L. ed. 125, 24 Sup. Ct. Rep. 51.

[34] Ibid.

view the judgment, even though a judgment for costs was rendered against him personally.[35] "The proper time to present the question is in the trial court whenever that is required by state practice in accordance with which the highest court of a state will not revise the judgment of the court below on questions not therein raised."[36] And if it is not presented before decision by the court of last resort in the state, it then becomes too late to present it.[37] It is not sufficient, therefore, to make the claim for the first time in the petition for writ of error;[38] or in a petition for rehearing after judgment,[39] except in a case where the highest state court

[35] Smith v. Indiana, 191 U. S. 138, 48 L. ed. 125, 24 Sup. Ct. Rep. 51.

[36] Spies v. Illinois, 123 U. S. 131, 31 L. ed. 80, 8 Sup. Ct. Rep. 21; see also Jacobi v. Alabama, 187 U. S. 133, 47 L. ed. 106, 23 Sup. Ct. Rep. 48; Layton v. Missouri, 187 U. S. 356, 47 L. ed. 214, 23 Sup. Ct. Rep. 137; Erie R. R. Co. v. Purdy, 185 U. S. 148, 46 L. ed. 847, 22 Sup. Ct. Rep. 605; Mutual Life Ins. Co. v. McGrew, 188 U. S. 308, 47 L. ed. 480, 23 Sup. Ct. Rep. 375, 63 L.R.A. 33; Baldwin v. Kansas, 129 U. S. 52, 32 L. ed. 640, 9 Sup. Ct. Rep. 193.

[37] Bollin v. Nebraska, 176 U. S. 83, 44 L. ed. 382, 20 Sup. Ct. Rep. 287; Citizens Sav's Bank v. Owensboro, 173 U. S. 636, 43 L. ed. 840, 19 Sup. Ct. Rep. 571; Winona, etc., Land Co. v. Minnesota, 159 U. S. 540, 40 L. ed. 252, 16 Sup. Ct. Rep. 88.

[38] Sayward v. Denny, 158 U. S. 180, 39 L. ed. 941, 15 Sup. Ct. Rep. 777; Merrison v. Watson, 154 U. S. 111, 38 L. ed. 927, 14 Sup. Ct. Rep. 995; Miller v. Texas, 153 U. S. 535, 38 L. ed. 812, 14 Sup. Ct. Rep. 874; Duncan v. Missouri, 152 U. S. 377, 38 L. ed. 485, 14 Sup. Ct. Rep. 570; Powell v. Brunswick County, 150 U. S. 433, 37 L. ed. 1134, 14 Sup. Ct. Rep. 166; Schuyler Nat. Bank v. Bollong, 150 U. S. 85, 37 L. ed. 1008, 14 Sup. Ct. Rep. 24; Loeber v. Schroeder, 149 U. S. 580, 37 L. ed. 856, 13 Sup. Ct. Rep. 934; Brown v. Massachusetts, 144 U. S. 573, 36 L. ed. 546, 12 Sup. Ct. Rep. 757; Butler v. Gage, 138 U. S. 52, 34 L. ed. 869, 11 Sup. Ct. Rep. 235; Chappell v. Bradshaw, 128 U. S. 132, 32 L. ed. 369, 9 Sup. Ct. Rep. 40; Brooks v. Missouri, 124 U. S. 394, 31 L. ed. 454, 8 Sup. Ct. Rep. 443; Spies v. Illinois, 123 U. S. 131, 31 L. ed. 80, 8 Sup. Ct. Rep. 21.

[39] Johnson v. New York L. Ins. Co. 187 U. S. 496, 47 L. ed. 273, 23 Sup. Ct. Rep. 194; Simmerman v. Nebraska, 116 U. S. 54, 29 L. ed. 535, 6 Sup. Ct. Rep. 333; Santa Cruz County v. Santa Cruz R. Co. 111 U. S. 361, 28 L. ed. 456, 4 Sup. Ct. Rep. 474; Meyer v. Richmond, 172 U. S. 82, 43 L. ed. 374, 19 Sup. Ct. Rep. 106; Winona, etc., R. Co. v. Plainview, 143 U. S. 371, 36 L. ed. 191, 12 Sup. Ct. Rep. 530; Worthy v. Barrett, 9 Wall. 611, 19 L. ed. 565; Mutual L. Ins. Co. v. McGrew, 188 U. S. 291, 47 L. ed. 480, 23 Sup. Ct. Rep. 375, 63 L.R.A. 33; Turner v. Richardson, 180 U. S. 92, 45 L. ed. 438, 21 Sup. Ct. Rep. 295; Capital Nat. Bank v. Cadiz First Nat. Bank, 172 U. S. 425, 43 L. ed. 502, 19 Sup. Ct. Rep. 202; Meyer v. Richmond, 172 U. S. 82, 43 L. ed. 374, 19 Sup. Ct. Rep. 106; Miller v. Cornwall R. Co. 168 U. S. 131, 42 L. ed. 409, 18 Sup. Ct. Rep. 34; Zadig v. Baldwin, 166 U. S. 488, 41 L. ed. 1087, 17 Sup. Ct. Rep. 639; Pim v. St. Louis, 165 U. S. 273, 41 L. ed. 714, 17 Sup. Ct. Rep. 322; Sayward v. Denny, 158 U. S. 180, 39 L. ed. 941, 15 Sup. Ct. Rep. 777; Loeber v. Schroeder, 149 U. S. 580, 37 L. ed. 856, 13 Sup. Ct. Rep. 934; Bushnell v. Crooke Min. etc., Co. 148 U. S. 682, 37 L. ed. 610, 13 Sup. Ct. Rep. 771; Winona, etc., R. Co. v. Plainview, 143 U. S. 371, 36 L. ed. 191, 12 Sup. Ct. Rep. 530; Leeper v. Texas, 139 U. S. 462, 35 L. ed. 225, 11 Sup. Ct. Rep. 577; Butler v. Gage, 138 U. S. 52, 34 L. ed. 869, 11 Sup. Ct. Rep. 235;

has entertained a petition for rehearing, containing Federal questions, and has decided them.[40]

The proper manner in which to raise the question is by motion, exception, pleading, or any other action which asserts the right, title, privilege, or immunity positively and unmistakably upon the record.[41] No particular form of words or phrases has ever been declared necessary, and all that is required is that the assertion of the rights be brought clearly to the attention of the court.[42] But the fact that it was so called to the court's attention and that it was decided or that its decision was necessary to the judgment or decree rendered in the case, must appear upon the face of the record[43] either expressly or by necessary implication.[44] In this

Texas etc., R. Co. v. Southern Pac. R. Co. 137 U. S. 48, 34 L. ed. 614, 11 Sup. Ct. Rep. 10; Susquehanna Boom Co. v. West Branch Boom Co. 110 U. S. 57, 28 L. ed. 69, 3 Sup. Ct. Rep. 438.

[40] Mallett v. North Carolina, 181 U. S. 589, 45 L. ed. 1015, 21 Sup. Ct. Rep. 730; Mut. Life Ins. Co. v. McGrew, 188 U. S. 291, 47 L. ed. 480, 23 Sup. Ct. Rep. 375, 63 L.R.A. 33; Leigh v. Green, 193 U. S. 79, 48 L. ed. 623, 24 Sup. Ct. Rep. 390.

[41] Axley Stave Co. v. Butter Co. 166 U S. 648, 41 L. ed. 1149, 17 Sup. Ct. Rep. 709; Mut. Life Ins. Co. v. McGrew, 188 U. S. 291, 47 L. ed. 480, 23 Sup. Ct. Rep. 375, 63 L.R.A. 33; Kipley v. Illinois, 170 U. S. 182, 42 L. ed. 998, 18 Sup. Ct. Rep. 550; Levy v. Superior Court, 167 U. S. 175, 177, 42 L. ed. 126, 17 Sup. Ct. Rep. 769; Dewey v. Des Moines, 173 U. S. 193, 43 L. ed. 665, 19 Sup. Ct. Rep. 379; Bollin v. Nebraska, 176 U. S. 83, 44 L. ed. 382, 20 Sup. Ct. Rep. 287; Winona, etc., Land Co. v. Minnesota, 159 U. S. 540, 40 L. ed. 252, 16 Sup. Ct. Rep. 88; Michigan Sugar Co. v. Michigan, 185 U. S. 112, 46 L. ed. 829, 22 Sup. Ct. Rep. 581; New York Central R. R. Co. v. New York, 186 U. S. 269, 46 L. ed. 1158, 22 Sup. Ct. Rep. 916; Chapin v. Fye, 179 U. S. 127, 45 L. ed. 119, 21 Sup. Ct. Rep. 71; Delamars Nev. Mining Co. v. Nesbitt, 177 U. S. 523, 44 L. ed. 872, 20 Sup. Ct. Rep. 715; Keokuk Bridge Co. v. Illinois, 175 U. S. 626, 44 L. ed. 299, 20 Sup. Ct. Rep. 205; Miller v. Cornwall R. Co. 168 U. S. 131, 42 L. ed. 409, 18 Sup. Ct. Rep. 34; Porter v. Foley, 24 How. 415, 16 L. ed. 740; Maxwell v. Newbold, 18 How. 511, 15 L. ed. 506; Lawler v. Walker, 14 How. 149, 14 L. ed. 364; Hoyt v. Sheldon, 1 Black, 518, 17 L. ed. 65; Edwards v. Elliott, 21 Wall. 532, 22 L. ed. 487; Messenger v. Mason, 10 Wall. 507, 19 L. ed. 1028; Erie R. R. Co. v. Purdy, 185 U. S. 148, 46 L. ed. 847, 22 Sup. Ct. Rep. 605.

[42] Green Bay, etc., Canal Co. v. Patten Paper Co. 172 U. S. 58, 43 L. ed 364, 19 Sup. Ct. Rep. 97; Carter v. Texas, 177 U. S. 442, 44 L. ed. 839, 20 Sup. Ct. Rep. 687; Erie R. R. Co. v. Purdy, 185 U. S. 148, 46 L. ed. 847, 22 Sup. Ct. Rep. 605.

[43] Citizens Sav's Bank v. Owensboro, 173 U. S. 626, 43 L. ed. 840, 19 Sup. Ct. Rep. 530; Dewey v. Des Moines, 173 U. S. 193, 43 L. ed. 665, 19 Sup. Ct. Rep. 379; Capital Nat. Bank v. Cadiz First Nat. Bank, 172 U. S. 425, 43 L. ed. 502, 19 Sup. Ct. Rep. 202; Green Bay, etc., Canal Co. v. Patten Paper Co. 172 U. S. 58, 43 L. ed. 364, 19 Sup. Ct. Rep. 97; Kipley v. Illinois, 170 U. S. 182, 42 L. ed. 998, 18 Sup. Ct. Rep. 550; Miller v. Cornwall R. Co. 168 U. S. 131, 42 L. ed. 409, 18 Sup. Ct. Rep. 34; Louisville, etc., R. Co. v. Louisville, 166 U. S. 709, 41 L. ed. 1173, 17 Sup. Ct. Rep. 725; Dibble v. Bellingham Bay Land Co. 163 U. S. 63, 41 L. ed. 72, 16 Sup. Ct. Rep. 939;

connection, note that a certificate of a chief justice of the highest court of a state, that certain Federal questions were presented and passed upon, is not a part of the record, its office being merely to make more certain that which is too indefinite in the record, and it is insufficient, in itself, to give the Supreme Court jurisdiction.[45]

To authorize a review of this class of cases as of the preceding

Chemical Nat. Bank v. City Bank, 160 U. S. 646, 40 L. ed. 568, 16 Sup. Ct. Rep. 417; Winona Land Company v. Minnesota, 159 U. S. 540, 40 L. ed. 252, 16 Sup. Ct. Rep. 88; Goodenough Horseshoe Mfg. Co. v. Rhode I. Horseshoe Co. 154 U. S. 635, 24 L. ed. 368, 14 Sup. Ct. Rep. 1180; Gray v. Coan, 154 U. S. 589, 38 L. ed. 1088, 14 Sup. Ct. Rep. 1168; Morrison v. Watson, 154 U. S. 111, 38 L. ed. 927, 14 Sup. Ct. Rep. 995; Miller v. Texas, 153 U. S. 535, 38 L. ed. 812, 14 Sup. Ct. Rep. 874; Marsh v. Nichols, 140 U. S. 344, 35 L. ed. 413, 11 Sup. Ct. Rep. 798; Murray v. Charlestown, 96 U. S. 432, 24 L. ed. 760; Wolf v. Stix, 96 U. S. 451, 24 L. ed. 640; Suydam v. Williamson, 20 How. 427, 15 L. ed. 978; Christ Church v. Phil. Co. 20 How. 26, 15 L. ed. 802; Carter v. Bennett, 15 How. 354, 14 L. ed. 727; Ocean Ins. Co. v. Polleys, 13 Pet. 157, 10 L. ed. 105; Crowell v. Randall, 10 Pet. 368, 9 L. ed. 458; Davis v. Parkard, 7 Pet. 276, 8 L. ed. 684; Satterlee v. Matthewson, 2 Pet. 380, 7 L. ed. 458; Miller v. Nichols, 4 Wheat. 311, 4 L. ed. 578; The Victory, 6 Wall. 382, 18 L. ed. 848; Sayward v. Denny, 158 U. S. 180, 39 L. ed. 941, 15 Sup. Ct. Rep. 777; Choteau v. Marguerite, 12 Pet. 507, 9 L. ed. 1174; Coons v. Gallaher, 15 Pet. 18, 10 L. ed. 645; Commercial Bank v. Buckingham, 5 How. 317, 12 L. ed. 169; Grand Gulf R., etc. Co. v. Marshall. 12 How. 165, 13 L. ed. 938; Maxwell v. Newbold, 18 How. 511, 15 L. ed. 506; Hoyt v. Sheldon. 1 Black, 518, 17 L. ed. 65; Taylor v. Morton, 2 Black, 481, 17 L. ed. 277; Gibson v. Chouteau, 8 Wall. 314, 19 L. ed. 317; Cockroft v. Vose, 14 Wall. 5, 20 L. ed. 875; Detroit City R. Co. v. Guthard, 114 U. S. 133, 29 L. ed. 118, 5 Sup. Ct. Rep. 811; Kansas Endowment Ass'n v. Kansas, 120 U. S. 103, 30 L. ed. 593, 7 Sup. Ct. Rep. 499; Nauer v. Thomas, 13 Allen (Mass.) 572; Inglee v. Coolidge, 2 Wheat. 363, 4 L. ed. 261; Fisher v. Cockerell, 5 Pet. 248, 8 L. ed. 114; Crawford v. Branch Bank, 7 How. 279, 12 L. ed. 700; Attorney Gen. v. Federal Street Meeting House, 1 Black, 262, 17 L. ed. 61; Parmelee v. Lawrence, 11 Wall. 36, 20 L. ed. 48; Brooks v. Missouri, 124 U. S. 394, 31 L. ed. 454, 8 Sup. Ct. Rep. 443; Powell v. Brunswick Co. 150 U. S. 433, 37 L. ed. 1134, 14 Sup. Ct. Rep. 166; Ansbro v. United States, 159 U. S. 695, 40 L. ed. 310, 16 Sup. Ct. Rep. 187; Murdock v. Memphis, 20 Wall. 636, 22 L. ed. 444; Ware v. Galveston City Co. 111 U. S. 170, 28 L. ed. 393, 4 Sup. Ct. Rep. 337.

[44] Craig v. Missouri, 4 Pet. 410, 7 L. ed. 903; Powell v. Brunswick Co. 150 U. S. 433, 37 L. ed. 1134, 14 Sup. Ct. Rep. 166; Sayward v. Denny, 158 U. S. 180, 39 L. ed. 941, 15 Sup. Ct. Rep. 777.

[45] Home for Incurables v. New York, 187 U. S. 155, 47 L. ed. 117, 23 Sup. Ct. Rep. 155, 63 L.R.A. 329; Yazoo, etc., R. R. Co. v. Adams, 180 U. S. 41, 45 L. ed. 415, 21 Sup. Ct. Rep. 256; Henkel v. Cincinnati, 177 U. S. 170, 44 L. ed. 720, 20 Sup. Ct. Rep. 573; Dibble v. Bellingham Bay Land Co. 163 U. S. 63, 41 L. ed. 72, 16 Sup. Ct. Rep. 939; Sayward v. Denny, 158 U. S. 180, 39 L. ed. 941, 15 Sup. Ct. Rep. 777; Newport Light Company v. Newport, 151 U. S. 527, 38 L. ed. 259, 14 Sup. Ct. Rep. 429; Powell v. Brunswick Co. 150 U. S. 433, 37 L. ed. 1134, 14 Sup. Ct. Rep. 166; Roby v. Colehour, 146 U. S. 153, 36 L. ed. 922, 13 Sup. Ct. Rep. 47; Felix v. Scharnweber, 125 U. S. 54, 31 L. ed. 687, 8 Sup. Ct. Rep. 759; Caperton v. Bowyer, 14 Wall 216, 20 L. ed. 882; Lawler v. Walker, 14 How. 149,

classes, the decision must be *adverse* to a title, right, privilege, or immunity claimed by the plaintiff in error.[46]

§ 338. General Propositions Flowing from § 237, Judicial Code. Having discussed each of the three classes of cases reviewable by writ of error under § 237, Judicial Code, there still remain certain general rules or propositions applicable to the section as a whole, which are briefly as follows:

1. It is not necessary that any particular amount of money be involved in order to entitle the plaintiff in error to a review.[47]

2. The section applies alike to criminal and civil cases either in law or in equity.[48]

3. Federal question must be real, not fictitious; that is, there must be some ground for the averment of the question.[49]

4. Questions of fact cannot be reviewed by the Supreme Court, but must be taken as found.[50]

14 L. ed. 364; Parmalee v. Lawrence, 11 Wall. 36, 20 L. ed. 48; Messenger v. Mason, 10 Wall. 507, 19 L. ed. 1028.

[46] Delamar's Nev. Gold Mining Co. v. Nesbitt, 177 U. S. 523, 44 L. ed. 872, 20 Sup. Ct. Rep. 715; Rae v. Homestead Loan, etc., Co. 176 U. S. 121, 44 L. ed. 398, 20 Sup. Ct. Rep. 341; Abbott v. Tacoma Bank of Commerce, 175 U. S. 409, 44 L. ed. 217, 20 Sup. Ct. Rep. 153; Jersey City, etc., Power Co. v. Morgan, 160 U. S. 288, 40 L. ed. 430, 16 Sup. Ct. Rep. 276; Sayward v. Denny, 158 U. S. 180, 39 L. ed. 941, 15 Sup. Ct. Rep. 777; Dower v. Richards, 151 U. S. 658, 38 L. ed. 305, 14 Sup. Ct. Rep. 452, 17 Mor. Min. Rep. 704; Tyler v. Cass Co. 142 U. S. 288, 35 L. ed. 1016, 12 Sup. Ct. Rep. 225; Gordon v. Caldcleugh, 3 Cranch, 268, 2 L. ed. 436; Buel v. Van Ness, 8 Wheat. 312, 5 L. ed. 624; Fulton v. McAffee, 16 Pet. 149, 10 L. ed. 918; Ocean Ins. Co. v. Polleys, 13 Pet. 157, 10 L. ed. 105; Ross v. Doe, 1 Pet. 655, 7 L. ed. 302; Hale v. Gaines, 22 How. 144, 16 L. ed. 264; Nelson v. Moloney, 174 U. S. 164, 43 L. ed. 934, 19 Sup. Ct. Rep. 622; Missouri Pacific Railway Co. v. Fitzgerald, 160 U. S. 556, 40 L. ed. 536, 16 Sup. Ct. Rep. 389.

[47] Weston v. Charlestown, 2 Pet. 449, 7 L. ed. 481; Holmes v. Jennison, 14 Pet. 540, 10 L. ed. 579; The Habana, 175 U. S. 682, 44 L. ed. 320, 20 Sup. Ct. Rep. 290. As to amount and value as an element of Supreme Court's appellate jurisdiction and history of changes therein, see Kirby v. America Soda Fountain Co. 194 U. S. 144, 48 L. ed. 911, 24 Sup. Ct. Rep. 619.

[48] Cohens v. Virginia, 6 Wheat. 264, 6 L. ed. 257; Verden v. Coleman, 22 How. 192, 16 L. ed. 336; Dower v. Richards, 151 U. S. 658, 38 L. ed. 305, 14 Sup. Ct. Rep. 452, 17 Mor. Min. Rep. 704.

[49] Hamblin v. Western Land Company, 147 U. S. 531, 37 L. ed. 267, 13 Sup. Ct. Rep. 353. See also Millingar v. Hartupee, 6 Wall. 258, 8 L. ed. 829; New Orleans v. New Orleans Water Works Co. 142 U. S. 79, 35 L. ed. 943, 12 Sup. Ct. Rep. 142; Wilson v. North Carolina, 169 U. S. 586, 42 L. ed. 865, 18 Sup. Ct. Rep. 435; St. Louis, etc., R. Co. v. Missouri, 156 U. S. 478, 39 L. ed. 502, 15 Sup. Ct. Rep. 443.

[50] Hedrick v. Atchison, etc., R. Co. 167 U. S. 673, 42 L. ed. 320, 17 Sup.

5. "If it appears that the judgment of the state court was correct, the jurisdiction does not attach regardless of the presence of a Federal question." [51]

The Supreme Court has summarized most of the essential conditions necessary to its jurisdiction to review decisions of state courts under this section, in the early case of Murdock v. Memphis, 20 Wallace, 635, where Miller, J., says in the opinion:

"We hold the following propositions on this subject as flowing from the statute as it now stands:

"That it is essential to the jurisdiction of this court over the judgment of a state court that it shall appear that one of the questions mentioned in the act (now § 237, Judicial Code) must have been raised and presented to the state court.

"That it must have been decided by the state court, or that its decision was necessary to the judgment or decree rendered in the case.

"That the decision must have been *against* the right, claimed or asserted by the plaintiff in error under the Constitution, treaties, laws, or authority of the United States.

"These things appearing, this court has jurisdiction and must examine the judgment so far as to enable it to decide whether this claim of right was correctly adjudicated by the state court.

"If it finds that it was rightly decided, the judgment must be affirmed.

"If it was erroneously decided against a plaintiff in error (or appellant) then this court must further inquire whether there is any other matter or issue adjudged by the state court, which is sufficiently broad to maintain the judgment of that court, notwithstanding the error in deciding the issue raised by the Federal question. If this is found to be the case, the judgment must be

Ct. Rep. 922; Atchison, etc., R. Co. v. Matthews, 174 U. S. 96, 43 L. ed. 909, 19 Sup. Ct. Rep. 609; Backus v. Fort St. Union Depot Co. 169 U. S. 557, 42 L. ed. 853, 18 Sup. Ct. Rep. 445; Egan v. Hart, 165 U. S. 188, 41 L. ed. 680, 17 Sup. Ct. Rep. 300; In re Buchanan, 158 U. S. 31, 39 L. ed. 884, 15 Sup. Ct. Rep. 723; Chicago, etc., R. Co. v. Chicago, 166 U. S. 226, 41 L. ed. 979, 17 Sup. Ct. Rep. 581; Missouri, etc., R. Co. v. Haber, 169 U. S. 613, 42 L. ed. 878, 18 Sup. Ct. Rep. 488.

[51] Hammond v. Johnson, 142 U. S. 78, 35 L. ed. 941, 12 Sup. Ct. Rep. 141.

affirmed without inquiring into the soundness of the decision on such other matter or issue.

"But if it be found that the issue raised by the question of Federal law is of such controlling character that its correct decision is necessary to any final judgment in the case, or that there has been no decision by the state court of any other matter or issue which is sufficient to maintain the judgment of that court, without regard to the Federal question, then this court will reverse the judgment of the state court, and will either render such judgment here as the state court should have rendered, or remand the case to that court as the circumstances of the case may require."

It is to be noted that it is only in case of the state court's decision being adverse to the powers exercised by the United States that the review by the Supreme Court is provided for. Thus it is apparent that it is the purpose of this section not to correct errors in the state courts, for if the Federal authority is not denied no review is allowed, but only as a check upon unconstitutional legislation by the state courts.[52]

§ 339. Procedure on Removal from State Courts of Last Resort.

§ *1003, R. S., Comp. St. 1901, p. 713, 4 F. S. A. 616.* "Writs of error from the Supreme Court to a state court in cases authorized by law shall be issued in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a court of the United States."

Thus, it is seen that the procedure on removal of causes from state courts is identical with that upon writ of error from the United States court, the discussion of which is found in chapter 28.

From the nature of the proceeding, however, the forms to be

[52] Simkin's Fed. Eq. Suit (2d ed.) p. 771; Remington Paper Co. v. Watkins, 173 U. S. 451, 43 L. ed. 762, 19 Sup. Ct. Rep. 456; Central Land Co. v. Laidley, 159 U. S. 103, 40 L. ed. 91, 16 Sup. Ct. Rep. 80.

used will differ from those suggested there. The following are suggested as guides:

PETITION FOR WRIT OF ERROR.

To the Honorable ..... Chief Justice of the Supreme Court of the United States and to the Associate Justices of the Court:

....., the plaintiff in the above-entitled cause, shows by this petition to this Honorable Court, that in the records, proceedings and decisions in the ..... court of the State of ....., the same being the highest court of said State in which a decision could be had in this suit, a manifest error has occurred, greatly to the damage of said .....

That, as appears in the record and proceedings there was drawn in question (here state the Federal question particularly involved); all of which fully appears in the records and proceedings of the case and is specifically set forth in the assignment of errors filed herewith.

WHEREFORE petitioner prays that a writ of error be allowed, and that a transcript of record, proceedings and papers upon which said decree was rendered, duly authenticated, be ordered sent to the Supreme Court of the United States at Washington, D. C., under the rules of such court in such cases made and provided, and that the same may be by this Honorable Court inspected and corrected in accordance with law and justice.

Signed .....,
Solicitor.

WRIT OF ERROR.

The President of the United States to the Honorable Judges of the Supreme Court of the State of ....., Greeting:

Whereas in the record and proceeding and in the rendition of the judgment of the above entitled cause which is now before you or some of you between ....., plaintiff, and ....., defendant, your court being the highest court of said state having jurisdiction of the cause, there was drawn in question (here state the Federal question involved) and the decision was against the validity, etc., (or in favor of the validity, etc., as the case may be) and whereas there is manifest error in said decision to the damage of ..... the petitioner in error, and whereas we are willing that if there is error it should be duly corrected, we command you therefore, if judgment be given therein, that you send under seal of your court, the record and proceedings in said cause to the Supreme Court of the United States together with this writ, within such time as may be necessary in order that you have the same at Washington on the .... day of ....., 19.., that

the record may be then inspected by the Supreme Court of the United States to be then and there held in order that justice may be done.

Witness the Honorable ..... Chief Justice of the Supreme Court that .... day of ....., A. D. 191...

Seal

....,
Clerk of the Supreme Court
of the United States.

The allowance of the writ may be indorsed upon it as follows: Allowed upon ..... giving bond in the sum of ..... Dollars according to law.

....,
Justice of the Supreme Court of
the United States.

Or a separate order of allowance may be made in substantially the following form:

IN THE SUPREME COURT OF THE UNITED STATES ..... TERM, ..., 191...

A. B.
v.
C. D.

ORDER OF ALLOWANCE OF WRIT OF ERROR.

On this .... day of ..... 19.., the application of A. B., plaintiff in this action for a writ of error, came on to be heard, said plaintiff being represented by counsel and it appearing to the Court from the petition filed herein and from the record filed therewith, that his application should be granted, and that a transcript of the record proceedings and papers, upon which the judgment of the court was rendered properly certified, should be sent to the Supreme Court of the United States, as prayed, in order that such proceedings may be had as may be just.

NOW, THEREFORE IT IS ORDERED that the writ of error be allowed upon bond being furnished by the plaintiff conditioned according to law in the sum of $..... (if it is desired that this act as a supersedeas, insert that provision here) and that a true copy of the record, assignment of errors and all proceedings in the case in the ..... court of ..... shall be transmitted to the Supreme Court of the United States, duly certified according to law, in order that said Court may inspect the same and take such action thereon as it deems proper according to law.

For the bond, citation, assignment of errors, and other papers, the forms given in chapter 41 may be used, the proper title of court and judge or justice being inserted.

CHAPTER 12.

SUMMARIES—JURISDICTION, AMOUNT AND VENUE FOR THE SEVERAL MATTERS OF DISTRICT COURT COGNIZANCE.

Sec.

350. General Statement.
351. Civil Suits by United States or Its Officers.
352. Land Grants of States.
353. Arising under the Constitution.
354. Arising under the Laws of the United States.
355. Arising under Treaties.
356. Between Citizens of Different States.
357. Between Citizens of a State and Foreign States.
358. Between Citizens of a State and Foreign Citizens or Subjects.
359. Crimes and Offenses.
360. Admiralty and Maritime Jurisdiction.
361. Slave Trade.
362. Revenue Laws.
363. Postal Laws.
364. Patent—Copyright—Trademark Laws.
365. Commerce Laws.
366. Penalties and Forfeitures.
367. Seizures for Forfeitures on High Seas.
368. Suits by Assignee of Debenture for Drawback for Duties.
369. Protection of Acts under United States Revenue Laws and to Enforce the Right to Vote.
370. Civil Rights Cases.
371. Suits to Recover Possession of an Office.
372. Suits under Provisions Title "National Banks."
373. By Aliens for Torts.
374. Against Consuls.
375. Bankruptcy.
376. Claims against the United States.
377. Unlawful Inclosure Public Lands.
378. Immigration and Contract Labor Laws.
379. Trade Restraints and Monopolies.
380. Indian Land Allotment.
381. Partition Suits. United States a Party.

§ 350. General Statement. Questions as to whether a particular matter may be brought originally in the United States district court, or if brought in the state court whether it may be removed to the Federal district court, and as to the amount required to be in controversy to give the Federal courts jurisdiction and the proper venue of the action, generally come up together at the very outset of the action.

The purpose of this chapter is to summarize under the various jurisdictional heads of district court cognizance the statutory provisions or requirements as to jurisdiction, original and exclusive or original and on removal, together with the amount required to be in controversy and venue in each case.

§ 351. Civil Suits by United States or Its Officers.

Original.

Pt. Subd. First, § 24, Judicial Code,[a] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all suits of a civil nature, at common law or equity, brought by the United States or by any officer thereof authorized to sue. . . . ."

Removal.

Pt. § 28, Judicial Code,[b] *36 Stat. at L. 1094, Comp. St. 1911, pp. 140, 141, 1912 Supp. F. S. A. v. 1, p. 146.* ". . . any other suit of a civil nature, at law or in equity, of which the district courts of the United States are given jurisdiction by this title, and which are now pending or may hereafter be brought in any state court, may be removed into the district court of the United States for the proper district by the defendant or defendants therein, being nonresidents of that state."

Amount.

Not material under § 24, Judicial Code.[c]

Venue.

In the district whereof defendant is an inhabitant, under § 51,

[a] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[b] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.
[c] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

Judicial Code, unless there are several defendants residing in different districts in the same state or different divisions in the same district, when the action will be in any such district or division under §§ 52, 53, Judicial Code, and except in local actions, §§ 54, 55, 57, Judicial Code.

§ 352. Land Grants of States.

Original.

Pt. Subd. First, § 24, Judicial Code,[d] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1. p. 138.* "Of all suits of a civil nature, at common law or in equity . . . between citizens of the same state claiming land grants from different states . . ."

Removal.

§ 30, Judicial Code,[e] *36 Stat. at L. 1096, Comp. St. 1911, p. 142, 1912 Supp. F. S. A. v. 1, p. 146.* "If in any action commenced in a state court the title of land be concerned, and the parties are citizens of the same state and the matter in dispute exceeds the sum or value of three thousand dollars, exclusive of interest and costs, the sum or value being made to appear, one or more of the plaintiffs or defendants, before the trial, may state to the court, and make affidavit if the court require it, that he or they claim, and shall rely upon, a right or title to the land under a grant from a state, and produce the original grant, or an exemplification of it, except where the loss of public records shall put it out of his or their power, and shall move that any one or more of the adverse party inform the court whether he or they claim a right or title to the land under a grant from some other state, the party or parties so required shall give such information, or otherwise not be allowed to plead such grant or give it in evidence upon the trial. If he or they inform the court that he or they do claim under such grant, any one or more of the party moving for such information may then, on petition and bond, as hereinbefore mentioned in this chapter, remove the cause for trial to the district court of the United States next to be holden in such district; and any one of either party removing the cause shall not be allowed to plead or give evidence of any other title than that

[d] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[e] For Annotation of this § 30, Judicial Code, see footnote [c], ante, our § 262.

by him or them stated as aforesaid as the ground of his or their claim."

Amount.

Immaterial under § 24, Judicial Code, where the suit is originally brought in the Federal court, but otherwise under § 30, Judicial Code, last above quoted, where it is brought in the state court and sought to be removed to the Federal court.

Venue of the action would be the district in which the land lies and if in two districts may be brought in either district, under § 55, Judicial Code, and if the defendant resides in a different district in the same state, the process may be directed against him there under § 54, Judicial Code, and if a suit to enforce a lien or remove cloud from title would come under § 57, Judicial Code.

§ 353. Arising under the Constitution.

Original.

Pt. Subd. First, § 24, Judicial Code,[f] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 138.* ". . . Of all suits of a civil nature, at common law or in equity . . . where the matter in controversy . . . (a) arises under the Constitution . . . of the United States . . ."

Removal.

Pt. § 28, Judicial Code,[g] *36 Stat. at L. 1094, Comp. St. 1911, p. 140, 1912 Supp. F. S. A. v. 1, p. 144.* "Any suit of a civil nature, at law or in equity, arising under the Constitution . . . of the United States . . . of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district."

Also separable controversies. See our § 289, ante.

[f] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.
[g] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.

Amount.

Pt. Subd. First, § 24, Judicial Code,[h] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 138.* ". . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (a) arises under the Constitution. . . ."

Venue.

In the district whereof defendant is an inhabitant under § 51, Judicial Code, unless there are several defendants residing in different districts in the same state or different divisions in the same district, when the action will be in any such district or division under §§ 52, 53, Judicial Code, and except in local actions, §§ 54, 55, 57, Judicial Code.

§ 354. Arising under the Laws of the United States.

Original.

Pt. Subd. First, § 24, Judicial Code,[i] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 138.* ". . . Of all suits of a civil nature, at common law or in equity . . . where the matter in controversy (a) arises under the . . . laws of the United States. . . ."

Removal.

Pt. § 28, Judicial Code,[j] *36 Stat. at L. 1094, Comp. St. 1911, p. 140, 1912 Supp. F. S. A. v. 1, p. 144.* "Any suit of a civil nature, at law or in equity, arising under the . . . laws of the United States . . . of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought, in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district."

Also separable controversies. See our § 289, ante.

Amount.

Pt. Subd. First, § 24, Judicial Code,[k] *36 Stat. at L. 1091,*

[h] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[i] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[j] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.
[k] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 138. ". . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (a) arises under the . . . laws of the United States. . . ."

This provision does not apply to many special laws referred to in subdivisions two to twenty-five inclusive, § 24, Judicial Code.

Venue.

In the district whereof defendant is an inhabitant under § 51, Judicial Code, unless there are several defendants residing in different districts in the same state or different divisions in the same district, when the action will be in any such district or division under §§ 52, 53, Judicial Code, and except in local actions, §§ 54, 55, 57, Judicial Code, or where there is some special provision under a particular law. See chapter 5, ante, on venue.

§ 355. Arising under Treaties.

Original.

Pt. Subd. First, § 24, Judicial Code,[1] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 138.* ". . . Of all suits of a civil nature, at common law or in equity . . . where the matter in controversy . . . (a) arises under . . . treaties made or which shall be made under their authority. . . ."

Removal.

Pt. § 28, Judicial Code,[m] *36 Stat. at L. 1094, Comp. St. 1911, p. 140, 1912 Supp. F. S. A. v. 1, p. 144.* "Any suit of a civil nature, at law or in equity arising under . . . treaties made, or which shall be made, under their (United States) authority, of which the district courts are given original jurisdiction by this title, which may now be pending or which may hereafter be brought, in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district. . . ."

Also separable controversies. See our § 289, ante.

[1] For Annotation of this § 24, Judicial Code, see footnote, [b], ante, our § 194.
[m] For Annotation of this § 28, Judicial Code, see footnote, [c], ante, our § 221.

Amount.

Pt. Subd. First, § 24, Judicial Code,[n] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 138.* ". . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars and (a) arises under . . . treaties."

Venue.

In the district whereof defendant is an inhabitant under § 51, Judicial Code, unless there are several defendants residing in different districts in the same state or different divisions in the same district, when the action will be in any such district or division under §§ 52, 53, Judicial Code, and except in local actions, §§ 54, 55, 57, Judicial Code.

§ 356. Between Citizens of Different States.

Original.

Pt. Subd. First, § 24, Judicial Code,[o] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 138.* ". . . Of all suits of a civil nature, at common law or in equity . . . where the matter in controversy . . . (b) is between citizens of different states. . . ."

Removal.

Pt. § 28, Judicial Code,[p] *36 Stat. at L. 1094, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 144.* ". . . Any other suit of a civil nature at law or in equity of which the district courts of the United States are given jurisdiction by this title, and which are now pending or which may hereafter be brought in any state court, may be removed into the district court of the United States for the proper district by the defendant or defendants therein, being nonresidents of that state. And when in any suit mentioned in this section there shall be a controversy which is wholly between citizens of different states, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the district court of the United States for the proper district. . . ."

n For Annotation of this § 24, Judicial Code, see footnote b, ante, our § 194.
o For Annotation of this § 24, Judicial Code, see footnote b, ante, our § 194.
p For Annotation of this § 28, Judicial Code, see footnote c, ante, our § 221.

Amount.

Pt. Subd. First, § 24, Judicial Code,[q] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 138.* ". . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, . . . and (b) is between citizens of different states."

Venue.[1]

Pt. § 51, Judicial Code,[r] *36 Stat. at L. 1101, Comp. St. 1911, p. 150, 1912 Supp. F. S. A. v. 1, p. 153.* ". . . and except as provided in the six succeeding sections . . . where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of the residence of either plaintiff or defendant."

§ 357. Between Citizens of a State and Foreign States.

Original.

Pt. Subd. First, § 24, Judicial Code,[s] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 138.* ". . . Of all suits of a civil nature, at common law or in equity, . . . where the matter in controversy . . . (c) is between citizens of a state and foreign states. . . ."

Removal.

Pt. § 28, Judicial Code,[t] *36 Stat. at L. 1094, Comp. St. 1911, p. 141, 1912 Supp. F. S. A. v. 1, p. 144.* ". . . Any other suit of a civil nature, at law or in equity, of which the district courts of the United States are given jurisdiction by his title, and which are now pending or which may hereafter be brought, in any state court, may be removed into the district court of the United States for the proper district by the defendant or defendants therein, being nonresidents of that state. . . ."

Amount.

Pt. Subd. First, § 24, Judicial Code,[u] *36 Stat. at L. 1091,*

[1] Whittaker v. Ill. C. R. Co. 176 Fed. 130.

[q] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[r] For Annotation of this § 51, Judicial Code, see footnote [a], ante, our § 161.
[s] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[t] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.
[u] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 138. ". . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars and . . . (c) is between citizens of a state and foreign states. . . ."

Venue.

A citizen in the district whereof he is a resident under § 51, Judicial Code, and the foreign state wherever valid service may be made.

§ 358. Between Citizens of a State and Foreign Citizens or Subjects.

Original.

Pt. Subd. First, § 24, Judicial Code,[v] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all suits of a civil nature, at common law or in equity . . . where the matter in controversy . . . (c) is between citizens of a state and foreign . . . citizens or subjects. . . ."

Removal.

Pt. § 28, Judicial Code,[w] *36 Stat. at L 1094, Comp. St. 1911, p. 141, 1912 Supp. F. S. A. v. 1, p. 144.* ". . . Any other suit of a civil nature, at law or in equity, of which the district courts of the United States are given jurisdiction by this title, and which are now pending or which may hereafter be brought, in any state court, may be removed into the district court of the United States for the proper district by the defendant or defendants therein, being nonresidents of that state. . . ."

Amount.

Pt. Subd. First, § 24, Judicial Code,[x] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 138.* ". . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars and . . . (c) is between citizens of a state and foreign . . . citizens or subjects. . . ."

[v] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[w] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.
[x] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

Venue.

Unless there is more than one district in the state and other defendants residing in such other districts, under § 52 of the Judicial Code, or likewise under § 53, Judicial Code, where there are more than one division in the district, the suit should be brought in the district whereof defendant is an inhabitant under § 51, Judicial Code. Galveston and Ry. v. Gonzales, 151 U. S. 506, 38 L. ed. 248, 14 Sup. Ct. Rep. 401. A suit against an alien may be brought where valid service may be made. In re Holvorst, 150 U. S. 660, 37 L. ed. 1211, 14 Sup. Ct. Rep. 221.

§ 359. Crimes and Offenses.

Original.

Subd. Second, § 24, Judicial Code,[y] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all crimes and offenses cognizable under the authority of the United States."

Exclusive.

Subd. First, § 256, Judicial Code,[x] *36 Stat. at L. 1160, Comp. St. 1911, p. 234, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all crimes and offenses cognizable under the authority of the United States."

Amount.

Not material under last part of subd. first, § 24, Judicial Code.[a]

Venue.[2]

Capital offenses—county "where the offense was committed, where that can be done without great inconvenience." (§ 40, Judicial Code.)

Offenses on high seas or elsewhere out of the jurisdiction of any particular state or district—"in the district where the offender is found or into which he is first brought." (§ 41, Judicial Code.)

[2] § 174, infra.

[y] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

[x] For Annotation of this § 256, Judicial Code, see footnote [a], ante, our § 192.

[a] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

Offenses committed in two districts—in either district. (§ 42, Judicial Code.)

Offenses against civil rights law—"wherever the defendant may be found." (§ 3, act March 1, 1875, ch. 114, 18 Stat. at L. 335.)

Offenses against act establishing bureau of animal industry —"within the district in which the violation was committed." (§ 9, act May 29, 1884, ch. 60, 23 Stat. at L. 33, Comp. St. 1901, p. 301, 1 F. S. A. 455.)

§ 360. Admiralty and Maritime Jurisdiction.

Original.

Pt. Subd. Third, § 24, Judicial Code,[b] *36 Stat. at L. 1091, Comp. St. 1911, p. 136, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common-law is competent to give it; . . ."

Exclusive.

Subd. Third, § 256, Judicial Code,[c] *36 Stat. at L. 1160, Comp. St. 1911, p. 234, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it; . . ."

Removal.

Question of jurisdiction may be raised on removal and case dismissed.[3]

Amount.

Not material under last part of subd. first, § 24, Judicial Code.[d]

Venue.

This depends on the nature of the action, if *in personam* in any district in which service may be made on defendant, if *in rem* in any district in which the property may be apprehended.[4]

[3] Auracher v. Omaha & S. L. R. Co. 102 Fed. 1.
[4] 1 Cyc. 850.
[b] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[c] For Annotation of this § 256, Judicial Code, see footnote [a], ante, our § 192.
[d] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

§ 361. Slave Trade.

Original.

Subd. Fourth, § 24, Judicial Code,[e] *36 Stat. at L. 1091, Comp. St. 1911, p. 136, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all suits arising under any law relating to slave trade."

Removal.

Pt. § 28, Judicial Code,[f] *36 Stat. at L. 1094, Comp. St. 1911, p. 140, 1912 Supp. F. S. A. v. 1, p. 144.* "Any suit of a civil nature at law or in equity, arising under the . . . laws of the United States . . . of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district."

Amount.

Not material under last part of subd. first, § 24, Judicial Code.[g]

Venue.

In the district whereof defendant is an inhabitant under § 51, Judicial Code, unless there are several defendants residing in different districts in the same state or different divisions in the same district, when the action will be in any such district or division under §§ 52, 53, Judicial Code.

§ 362. Revenue Laws.

Original.

Subd. Fifth, § 24, Judicial Code,[h] *36 Stat. at L. 1091, Comp. St. 1911, p. 136, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all cases arising under any law providing for internal revenue, or from revenue imports or tonnage, except those cases arising under any law providing revenue from imports, jurisdiction of which has been conferred upon the court of customs appeals."

[e] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[f] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.
[g] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[h] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

Removal.

Pt. § 28, Judicial Code,[i] *36 Stat. at L. 1094, Comp. St. 1911, p. 140, 1912 Supp. F. S. A. v. 1, p. 144.* "Any suit of a civil nature, at law or in equity, arising under the . . . laws of the United States . . . of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district."

Amount.

Not material under last part of subd. first, § 24, Judicial Code.[j]

Venue.

Pt. § 44, Judicial Code,[k] *36 Stat. at L. 1100, Comp. St. 1911, p. 148, 1912 Supp. F. S. A. v. 1, p. 152.* ". . . either in the district where the liability for such tax occurs or in the district where the delinquent resides."

§ 363. Postal Laws.

Original.

Subd. Sixth, § 24, Judicial Code,[l] *36 Stat. at L. 1091, Comp. St. 1911, p. 136, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all cases arising under the postal laws."

Removal.

Pt. § 28, Judicial Code,[m] *36 Stat. at L. 1094, Comp. St. 1911, p. 140, 1912 Supp. F. S. A. v. 1, p. 144.* "Any suit of a civil nature, at law or in equity, arising under the . . . laws of the United States . . . of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district."

[i] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.
[j] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[k] For Annotation of this § 44, Judicial Code, see footnote [s], ante, our § 176.
[l] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[m] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.

Amount.

Not material under last part of subd. first, § 24, Judicial Code.[n]

Venue.

In the district whereof defendant is an inhabitant under § 51, Judicial Code, unless there are several defendants residing in different districts in the same state or different divisions in the some district, when the action will be in any such district or division under §§ 52, 53, Judicial Code.

§ 364. Patent—Copyright—Trademark Laws.

Original.

Subd. Seventh, § 24, Judicial Code,[o] *36 Stat. at L. 1091, Comp. St. 1911, p. 234, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all suits at law or in equity arising under the patent, copyright, and trademark laws."

Exclusive. (Except as to trademarks.)

Subd. Fifth, § 256, Judicial Code,[p] *36 Stat. at L. 1160, Comp. St. 1911, p. 234, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all cases arising under the patent-right or copyright laws of the United States."

Removal.

Question of state court's jurisdiction may be raised after removal and case dismissed.[5]

Amount.

Not material under last part of subd. first, § 24, Judicial Code.[q]

Venue.

Pt. § 48, Judicial Code,[r] *36 Stat. at L. 1100, Comp. St. 1911, p. 149, 1912 Supp. F. S. A. v. 1, p. 153.* ". . . in the district court in which the defendant is an inhabitant, or in

5 Auracher v. Omaha & St. L. R. Co. 102 Fed. 1.

n For Annotation of this § 24, Judicial Code, see footnote b, ante, our § 194.

o For Annotation of this § 24, Judicial Code, see footnote b, ante, our § 194.

p For Annotation of this § 256, Judicial Code, see footnote a, ante, our § 192.

q For Annotation of this § 24, Judicial Code, see footnote b, ante, our § 194.

r For Annotation of this § 48, Judicial Code, see footnote k, ante, our § 171.

any district in which the defendant, whether a person, partnership or corporation shall have committed acts of infringment and have a regular and established place of business. . . ."

§ 365. Commerce Laws.

Original.

Subd. Eighth, § 24, Judicial Code,[s] *36 Stat. at L. 1091, Comp. St. 1911, p. 136, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all suits and proceedings arising under any law regulating commerce, except those suits and proceedings exclusive jurisdiction of which has been conferred upon the commerce court."

Commerce court now abolished and jurisdiction transferred to district court. See ch. 9, Judicial Code, in Appendix.

Removal.

Pt. § 28, Judicial Code,[t] *36 Stat. at L. 1094, Comp. St. 1911, p. 140, 1912 Supp. F. S. A. v. 1, p. 144.* "Any suit of a civil nature, at law or in equity, arising under the laws of the United States . . . of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district."

Amount.

Not material under last part of subd. first, § 24, Judicial Code, except property damages under amendment to § 28, Judicial Code, quoted in our § 299 above.[u]

Venue.

In the district in which defendant resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs. § 16, Interstate Commerce Act, 1912

[s] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[t] For Annotation of this § 28, Judicial Code, see footnote [c], ante our § 221.
[u] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

Supp. F. S. A. v. 1, p. 123. Venue of suits to enforce, set aside, or suspend orders of the commission is set out § 180, infra.

§ 366. Penalties and Forfeitures.

Original.

Subd. Ninth, § 24, Judicial Code,[v] *36 Stat. at L. 1091, Comp. St. 1911, p. 136, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all suits and proceedings for the enforcement of penalties and forfeitures incurred under any law of the United States."

Exclusive.

Subd. Second, § 256, Judicial Code,[w] *36 Stat. at L. 1160, Comp. St. 1911, p. 234, 1912 Supp. F. S. A. v. 1, p. 238.* "Of all suits for penalties and forfeitures incurred under the laws of the United States."

Amount.

Not material under last part of subd. first, § 24, Judicial Code.[x]

Venue.

Pt. § 43, Judicial Code,[y] *36 Stat. at L. 1100, Comp. St. 1911, p. 148, 1912 Supp. F. S. A. v. 1, p. 153.* ". . . either in the district where they accrue or in the district where the offender is found."

§ 367. Seizures for Forfeitures on High Seas.

Original.

Pt. Subd. Third, § 24, Judicial Code,[z] *36 Stat. at L. 1091, Comp. St. 1911, p. 136, 1912 Supp. F. S. A. v. 1, p. 138.* ". . . of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize."

Exclusive.

Subd. Fourth, § 256, Judicial Code,[a] *36 Stat. at L. 1160,*

[v] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[w] For Annotation of this § 256, Judicial Code, see footnote [a], ante, our § 192.
[x] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[y] For Annotation of this § 43, Judicial Code, see footnote [q], ante, our § 175.
[z] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[a] For Annotation of this § 256, Judicial Code, see footnote [a], ante, our § 192.

Comp. St. 1911, p. 234, 1912 Supp. F. S. A. v. 1, p. 238. "Of all seizures under the laws of the United States, on land or on waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States, and of all proceedings for the condemnation of property taken as prize."

Amount.

Not material under last part of subd. first, § 24, Judicial Code.[b]

Venue.

See also our §§ 175 and 177, ante.

Pt. § 47,[bb] *Judicial Code.* ". . . in any district into which the property so seized is brought and proceedings instituted. . . . (If made in any district) in the district where the seizure is made, except in cases where it is otherwise provided."

§ 368. Suits by Assignee of Debenture for Drawback for Duties.

Original.

Subd. Tenth, § 24, Judicial Code,[c] *36 Stat. at L. 1091, Comp. St. 1911, p. 136, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all suits by the assignee of any debenture for drawback of duties, issued under any law for the collection of duties, against the person to whom such debenture was originally granted, or against any indorser thereof, to recover the amount of such debenture."

Removal.

Pt. § 28, Judicial Code. "Any suit of a civil nature, at law or in equity, arising under the . . . laws of the United States . . . of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district."

[b] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[bb] For Annotation of this § 47, Judicial Code, see footnote [v], ante, our § 178.
[c] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

Amount.

Not material under last part of subd. first, § 24, Judicial Code.[d]

Venue.

In the district whereof defendant is an inhabitant under § 51, Judicial Code, unless there are several defendants residing in different districts in the same state or different divisions in the same district, when the action will be in any such district or division under §§ 52, 53, Judicial Code.

§ 369. Protection of Acts under United States Revenue Laws and to Enforce the Right to Vote.

Original.

Subd. Eleventh, § 24, Judicial Code,[e] *36 Stat. at L. 1091, Comp. St. 1911, p. 137, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all suits brought by any person to recover damages for any injury to his person or property on account of any act done by him, under any law of the United States, for the protection or collection of any of the revenues thereof, or to enforce the right of citizens of the United States to vote in the several states."

Removal.

Pt. § 28, Judicial Code. "Any suit of a civil nature, at law or in equity, arising under the . . . laws of the United States . . . of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district."

Amount.

Not material under last part of subd. first, § 24, Judicial Code.[f]

Venue.

In the district whereof defendant is an inhabitant under § 51,

[d] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[e] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[f] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

Judicial Code, unless there are several defendants residing in different districts in the same state or different divisions in the same district, when the action may be in any such district or division under §§ 52, 53, Judicial Code.

§ 370. Civil Rights Cases.

Original.

Subd. Twelfth, § 24, Judicial Code,[g] *36 Stat. at L. 1091, Comp. St. 1911, p. 137, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all suits authorized by law to be brought by any person for the recovery of damages on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section nineteen hundred and eighty, Revised Statutes."

Subd. Thirteenth, § 24, Judicial Code,[h] *36 Stat. at L. 1091, Comp. St. 1911, p. 137, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all suits authorized by law to be brought against any person who, having knowledge that any of the wrongs mentioned in section nineteen hundred and eighty, Revised Statutes, are about to be done, and having power to prevent or aid in preventing the same, neglects or refuses so to do, to recover damages for any such wrongful act."

Subd. Fourteenth, § 24, Judicial Code,[i] *36 Stat. at L. 1091, Comp. St. 1911, p. 137, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all suits at law or in equity, authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any state, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

Removal.

§ 31, Judicial Code,[j] *36 Stat. at L. 1096, Comp. St. 1911, p. 143, 1912 Supp. F. S. A. v. 1, p. 147.* "When any civil

[g] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[h] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[i] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[j] For Annotation of this § 31, Judicial Code, see footnote [b], ante, our § 216.

suit or criminal prosecution is commenced in any state court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the state, or in the part of the state where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States, or against any officer, civil or military, or other person, for any arrest or imprisonment or other trespasses or wrongs made or committed by virtue of or under color of authority derived from any law providing for equal rights as aforesaid, or for refusing to do any act on the ground that it would be inconsistent with such law, such suit or prosecution may, upon the petition of such defendant, filed in said state court at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed for trial into the next district court to be held in the district where it is pending."

Venue.

In the district whereof defendant is an inhabitant under § 51, Judicial Code, unless there are several defendants residing in different districts in the same state or different divisions in the same district, when the action may be in any such district or division under §§ 52, 53, Judicial Code.

§ 371. Suits to Recover Possession of an Office.

Original.

Subd. Fifteenth, § 24, Judicial Code,[k] *36 Stat. at L. 1091, Comp. St. 1911, p. 137, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all suits to recover possession of any office, except that of elector of President or Vice President, Representative in or delegate to Congress, or member of a state legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote, on account of race, color, or previous condition of servitude: *Provided,* That such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Con-

[k] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

stitution of the United States, and secured by any law, to enforce the right of citizens of the United States to vote in all the states."

Removal.

Pt. § 28, Judicial Code,[1] *36 Stat. at L. 1094, Comp. St. 1911, p. 140, 1912 Supp. F. S. A. v. 1, p. 144.* "Any suit of a civil nature, at law or in equity, arising under the . . . laws of the United States . . . of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district."

Amount.

Not material under last part of subd. first, § 24, Judicial Code.[m]

Venue.

In the district whereof defendant is an inhabitant under § 51, Judicial Code, unless there are several defendants residing in different districts in the same state or different divisions in the same district, when the action may lie in any such district or division under §§ 52, 53, Judicial Code.

§ 372. Suits under Provisions Title "National Banks."

Original.

Subd. Sixteenth, § 24, Judicial Code,[n] *36 Stat. at L. 1091, Comp. St. 1911, p. 138, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all cases commenced by the United States, or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provision of title "National Banks," Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. And all national banking associations established under the laws

[1] For Annotation of this § 28, Judicial Code, see footnote, **c**, ante, our § 221.
[m] For Annotation of this § 24, Judicial Code, see footnote **b**, ante, our § 194.
[n] For Annotation of this § 24, Judicial Code, see footnote **b**, ante, our § 194.

of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the states in which they are respectively located."

Removal.

Pt. § 28, Judicial Code,[o] *36 Stat. at L. 1094, Comp. St. 1911, p. 140, 1912 Supp. F. S. A. v. 1, p. 144.* "Any suit of a civil nature, at law or in equity, arising under the . . . laws of the United States . . . of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district."

Amount.

Not material under last part subd. first, § 24, Judicial Code.[p]

Venue.

Pt. § 49, Judicial Code,[q] *36 Stat. at L. 1100, Comp. St. 1911, p. 149, 1912 Supp. F. S. A. v. 1, p. 153.* " . . . to enjoin Comptroller of the Currency . . . in the district where such association is located."

See subd. sixteenth, § 24, Judicial Code, above quoted.

Other suits in the district whereof defendant is an inhabitant under § 51, Judicial Code, unless there are several defendants residing in different districts in the same state or different divisions in the same district, when the action will be in any such district or division under §§ 52, 53, Judicial Code.

§ 373. By Aliens for Torts.

Original.

Subd. Seventeenth, § 24, Judicial Code,[r] *Comp. St. 1911, p. 138, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all suits brought by any alien for a tort only, in violation of the laws of nations or of a treaty of the United States."

o For Annotation of this § 28, Judicial Code, see footnote c, ante, our § 221.
p For Annotation of this § 24, Judicial Code, see footnote b, ante, our § 194.
q For Annotation of this § 49, Judicial Code, see footnote l, ante, our § 172.
r For Annotation of this § 24, Judicial Code, see footnote b, ante, our § 194.

Removal.

Pt. § 28, Judicial Code,[s] *36 Stat. at L. 1094, Comp. St. 1911, p. 140, 1912 Supp. F. S. A. v. 1, p. 144.* "Any suit of a civil nature, at law or in equity, arising under the . . . treaties made or which shall be made under their authority . . . of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district."

§ 34, Judicial Code,[t] *36 Stat. at L. 1098, Comp. St. 1911, p. 145, 1912 Supp. F. S. A. v. 1, p. 149.* "Whenever a personal action has been or shall be brought in any state court by an alien against any citizen of a state who is, or at the time the alleged action accrued was, a civil officer of the United States, being a nonresident of that state wherein jurisdiction is obtained by the state court, by personal service of process, such action may be removed into the district court of the United States in and for the district in which the defendant shall have been served with the process, in the same manner as now provided for the removal of an action brought in a state court by the provisions of the preceding section."

Amount.

Not material under last part subd. first, § 24, Judicial Code.[u]

Venue.

In the district whereof defendant is an inhabitant under § 51, Judicial Code, unless there are several defendants residing in different districts in the same state or different divisions in the same district, when the action will be in any such district or division under §§ 52, 53, Judicial Code.

§ 374. Against Consuls.

Original.

Subd. Eighteenth, § 24, Judicial Code,[v] *36 Stat. at L.*

[s] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.
[t] For Annotation of this § 34, Judicial Code, see footnote [p], ante, our § 301.
[u] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[v] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

1091, Comp. St. 1911, p. 138, 1912 Supp. F. S. A. v. 1, p. 138. "Of all suits against consuls and vice consuls."

Exclusive.

Pt. Subd. Eighth, § 256, Judicial Code,[w] *36 Stat. at L. 1160, Comp. St. 1911, p. 234, 1912 Supp. F. S. A. v. 1, p. 238.* "Of all suits and proceedings against . . . consuls or vice consuls."

Amount.

Not material under last part subd. first, § 24, Judicial Code.[x]

Venue.

In the district whereof defendant is an inhabitant under § 51, Judicial Code, unless there are several defendants residing in different districts in the same state or different divisions in the same district, when the action may lie in any such district or division under §§ 52, 53, Judicial Code, and except in local actions, §§ 54, 55, 57, Judicial Code.

§ 375. Bankruptcy.

Original.

Subd. Nineteenth, § 24, Judicial Code,[y] *36 Stat. at L. 1091, Comp. St. 1911, p. 138, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all matters and proceedings in bankruptcy."

Exclusive.

Subd. Sixth, § 256, Judicial Code,[z] *36 Stat. at L. 1160, Comp. St. 1911, p. 234, 1912 Supp. F. S. A. v. 1, p. 238.* "Of all matters and proceedings in bankruptcy."

Amount.

Not material under last part subd. first, § 24, Judicial Code.[a]

Venue.

Under the bankruptcy act.

[w] For Annotation of this § 256, Judicial Code, see footnote [a], ante, our § 192.
[x] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[y] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[z] For Annotation of this § 256, Judicial Code, see footnote [a], ante, our § 192.
[a] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

§ 376. Claims against the United States.

Original.

Subd. Twentieth, § 24, Judicial Code,[b] *36 Stat. at L. 1091, Comp. St. 1911, p. 138, 1912 Supp. F. S. A. v. 1, p. 138.* "Concurrent with the court of claims, of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable, and of all set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the government of the United States against any claimant against the government in said court: *Provided, however,* That nothing in this paragraph shall be construed as giving to either the district courts or the court of claims jurisdiction to hear and determine claims growing out of the late Civil War, and commonly known as "war claims," or to hear and determine other claims which had been rejected or reported on adversely prior to the third day of March, eighteen hundred and eighty-seven, by any court, department, or commission authorized to hear and determine the same, or to hear and determine claims for pensions; or as giving to the district courts jurisdiction of cases brought to recover fees, salary, or compensation for official services of officers of the United States, or brought for such purpose by persons claiming as such officers or as assignees or legal representatives thereof; but no suit pending on the twenty-seventh day of June, eighteen hundred and ninety-eight, shall abate or be affected by this provision: *And provided further,* That no suit against the government of the United States shall be allowed under this paragraph unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided,* That the claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the suit

[b] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

be brought within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively. All suits brought and tried under the provisions of this paragraph shall be tried by the court without a jury."

Exclusive.

The United States cannot be sued without its consent.

Amount.

Less than $10,000.

§ 377. Unlawful Inclosure Public Lands.

Original.

Subd. Twenty-first, § 24, Judicial Code,[c] *36 Stat. at L. 1091, Comp. St. 1911, p. 139, 1912 Supp. F. S. A. v. 1, p. 138.* "Of proceedings in equity, by writ of injunction, to restrain violations of the provisions of laws of the United States to prevent the unlawful inclosure of public lands; and it shall be sufficient to give the court jurisdiction if service of original process be had in any civil proceeding on any agent or employee having charge or control of the inclosure."

Exclusive.

The act authorizing the bringing of these suits provides for bringing same in United States district courts, hence would not be brought in state court, and therefore could not be removed from a state court.

Amount.

Not material under last part subd. first, § 24, Judicial Code.[d]

Venue.

The district where the land lies, and if in two districts may

[c] For Annotation of this § 24, Judicial Code, see footnote [b], ante our § 194.
[d] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

be brought in either district under § 55, Judicial Code, and if defendant resides in a different district in the same state, process may be directed against him under § 54 of the Judicial Code.

§ 378. Immigration and Contract Labor Laws.

Original.

Subd. Twenty-second, § 24, Judicial Code,[e] *36 Stat. at L. 1091, Comp. St. 1911, p. 139, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all suits and proceedings arising under any law regulating the immigration of aliens, or under the contract labor laws."

Removal.

Pt. § 28, Judicial Code,[f] *36 Stat. at L. 1094, Comp. St. 1911, p. 140, 1912 Supp. F. S. A. v. 1, p. 144.* "Any suit of a civil nature, at law or in equity, arising under the laws of the United States . . . of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district."

Amount.

Not material under last part of subd. first, § 24, Judicial Code.

Venue.

In the district whereof defendant is an inhabitant under § 51, Judicial Code, unless there are several defendants residing in different districts in the same state or different divisions in the same district, when the action will be in any such district or division under §§ 52, 53, Judicial Code.

§ 379. Trade Restraints and Monopolies.

Original.

Subd. Twenty-third, § 24, Judicial Code,[g] *36 Stat. at L. 1091, Comp. St. 1911, p. 139, 1912 Supp. F. S. A. v. 1, p.*

[e] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our §194.
[f] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.
[g] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

138. "Of all suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies."

Exclusive.

Loewe v. Lawler, 130 Fed. 633.

Amount.

§ *77, Act Aug. 27, 1894, ch. 349, 28 Stat. at L. 570, Comp. St. 1901, p. 3203, 7 F. S. A. 347,* § *7, Act July 2, 1890, ch. 647, 26 Stat. at L. 209, Comp. St. 1901, p. 3202, 7 F. S. A. 344.* "Damage suit may be brought without respect to the amount in controversy."

Venue.

§ *75, Act 1894, above cited, and* § *5, Act 1890, above cited.* When "the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not."

§ *77, Act 1894, above cited,* § *7, Act 1890, above cited.* ". . . in the district in which the defendant resides or is found. . . ."

§ 380. Indian Land Allotment.

Original.

Subd. Twenty-fourth, § *24, Judicial Code,*[1] *36 Stat. at L. 1091, Comp. St. 1911, p. 139, 1912 Supp. F. S. A. v. 1, p. 138.* "Of all actions, suits, or proceedings involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty."

Procedure.

§ *2, Act Feb. 6, 1901, ch. 217, Amending Act Aug. 15, 1894, ch. 290, 31 Stat. at L. 760; Penal Code,* § *5807, 3 F. S. A. 504.* "(Service of petition—district attorney to represent government—failure to plead—claim to be established by proof.) That the plaintiff shall cause a copy of his petition filed under the preceding section to be served upon the

[1] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

district attorney of the United States in the district wherein suit is brought, and shall mail a copy of same, by registered letter, to the Attorney General of the United States, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letter. It shall be the duty of the district attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the government in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case to file a plea, answer, or demurrer on the part of the government, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever of the government in the premises: *Provided,* That should the district attorney neglect or refuse to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court."

§ 381. Partition Suits. United States a Party.

Original.

Subd. Twenty-fifth, § 24, Judicial Code,[j] *36 Stat. at L. 1091, Comp. St. 1911, p. 139, 1912 Supp. F. S. A. v. 1, p. 138.* "Of suits in equity brought by any tenant in common or joint tenant for the partition of lands in cases where the United States is one of such tenants in common or joint tenants, such suits to be brought in the district in which such land is situate."

Removal.

Pt. § 28, Judicial Code,[k] *36 Stat. at L. 1094, Comp. St. 1911, p. 140, 1912 Supp. F. S. A. v. 1, p. 144.* "Any suit of a civil nature, at law or in equity, arising under the . . . laws of the United States . . . of which the district courts are given original jurisdiction by this title, which may now be pending or which may hereafter be brought in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district."

[j] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.
[k] For Annotation of this § 28, Judicial Code, see footnote [c], ante, our § 221.

Amount.

Not material under last part subd. first, § 24, Judicial Code.[l]

Venue.

Pt. Subd. Twenty-fifth, § 24, Judicial Code,[m] *36 Stat. at L. 1091, Comp. St. 1911, p. 139, 1912 Supp. F. S. A. v. 1, p. 138.* ". . . such suits to be brought in the district in which the land is situate."

Procedure.

§ 2, Act May 17, 1898, ch. 339, 30 Stat. at L. 416, 1 Comp. Stat. 1901, p. 516, 5 F. S. A. 405. "(Procedure—service of process—appearance—pleading—purchase by United States.) That when such suit is brought by any person owning an undivided interest in such land, other than the United States, against the United States alone or against the United States and any other of such owners, service shall be made on the United States by causing a copy of the bill filed to be served upon the district attorney of the district wherein the suit is brought, and by mailing a copy of the same by registered letter to the Attorney General of the United States; and the complainant in such bill shall file with the clerk of the court in which such bill is filed an affidavit of such service and of the mailing of such letter. It shall be the duty of the district attorney upon whom service of the bill is made as aforesaid to appear and defend the interests of the government, and within sixty days after service upon him as hereinabove prescribed, unless the time shall be enlarged by order of the court made in the case, to file a plea, answer, or demurrer on the part of the government, and the cause shall proceed as other cases for partition by courts of equity, and in making such partition the court shall be governed by the same principles of equity that control courts of equity in partition proceedings between private persons. Whenever in such suit the court shall order a sale of the property or any part thereof the Attorney General of the United States may, in his discretion, bid for the same in behalf of the United States. If the United States shall be the purchaser, the amount of the purchase money shall be paid from the Treasury of the United States upon a warrant drawn by the Secretary of the Treasury on the requisition of the Attorney General."

[l] For Annotation of this § 24, Judicial Code, see footnote [b], ante our § 194.
[m] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

CHAPTER 13.

STATUTES OF LIMITATIONS.

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§ 390. In General. Unless a Federal statute of limitations is prescribed for the particular suit, the state statute of limitations of the state in which the district lies will govern under § 721, R. S., quoted next below.[1]

[1] Michigan Insurance Bank v. Eldred, 130 U. S. 696, 32 L. ed. 1081, 9 Sup. Ct. Rep. 691; Davie v. Briggs, 97 U. S. 637, 24 L. ed. 1089; Elmendorf v. Taylor, 10 Wheat. 176, 6 L. ed. 289; Campbell v. City of Haverhill, 155 U. S. 615, 39 L. ed. 280, 15 Sup. Ct. Rep. 217; Lewis v. Lewis, 7 How. 776, 12 L. ed. 909; Pond v. United States, 111 Fed. 989, 49 C. C. A. 582; Butler v. Pool, 44 Fed. 586, and other cases cited in Rose's Code § 10, page 89, and 4 F. S. A. p. 523.

§ *721, R. S., Comp. St. 1901, p. 581, 4 F. S. A. 517.* "The laws of the several states, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply."

Special limitations for crimes and offenses are set out in §§ 391–2–3–4–5–6–7, infra, for penalties and forfeitures in §§ 398, 399, 401, 402, infra; suits against the United States, §§ 403–4, infra; actions respecting land patents §§ 405–6–7, infra, and personal actions, §§ 408, 409, 410, 411, 412, infra.

§ 391. Capital Offenses.

§ *1043, R. S., Comp. St. 1901, p. 725, Rose's Code, § 884, 2 F. S. A. 358.* "No person shall be prosecuted, tried or punished for treason or other capital offense, wilful murder excepted, unless the indictment is found within three years next after such treason or capital offense is done or committed."

§ 392. Offenses Not Capital.

§ *1044, R. S., Comp. St. 1901, p. 725, Rose's Code, § 885, 2 F. S. A. 358.* "No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section one thousand and forty-six (R. S.) unless the indictment is found, or the information is instituted within three years next after such offense shall have been committed. But this act shall not have effect to authorize the prosecution, trial or punishment for any offense, barred by the provisions of existing laws."

§ 393. Unless Fleeing from Justice.

§ *1045, R. S., Comp. St. 1901, p. 726, Rose's Code, § 886, 2 F. S. A. 360.* "(Fleeing from justice.) Nothing in the two preceding sections shall extend to any person fleeing from justice."

§ 394. Crimes under Revenue and Slave-Trade Laws.

§ *1046, R. S., Comp. St. 1901, p. 726, Rose's Code, § 888, 2 F. S. A. 36.* "No person shall be prosecuted, tried, or

punished for any crime arising under the revenue laws, or the slave-trade laws of the United States, unless the indictment is found or the information is instituted within five years next after the committing of such crime."

§ 395. Crimes under Internal Revenue Laws.

§ 1, Act July 5, 1884, ch. 225, 23 Stat. at L. 122, Comp. St. 1901, p. 726, 3 F. S. A. 806, Rose's Code, § 889. "That no person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense, in all cases where the penalty prescribed may be imprisonment in the penitentiary, and within two years in all other cases: *Provided,* That the time during which the person committing the offense is absent from the district wherein the same is committed shall not be taken as any part of the time limited by law for the commencement of such proceedings: *Provided further,* That the provisions of this act shall not apply to offenses committed prior to its passage: *And provided further,* That where a complaint shall be instituted before a commissioner of the United States within the period above limited, the time shall be extended until the discharge of the grand jury at its next session within the district: *And provided further,* That this act shall not apply to offenses committed by officers of the United States."

§ 396. Seduction of Female Passengers on Vessels.

Pt. § 281, Penal Code, Comp. St. 1911, p. 1673, 1909 Supp. F. S. A. 483. ". . . No conviction shall be had on the testimony of the female seduced, without other evidence, nor unless the indictment is found within one year after the arrival of the vessel on which the offense was committed at the port for which it was destined."

§ 397. Violation of Naturalization Laws.

§ 24, Act June 29, 1906, ch. 3592, 34 Stat. at L. 608, Rose's Code, § 891, Comp. St. 1911, p. 539, 1909 Supp. F. S. A. 375. (Limit for prosecutions.) "That no person shall be prosecuted, tried, or punished for any crime arising under the provisions of this act unless the indictment is found or the information is filed within five years next after the commission of such crime."

§ 398. Penalties and Forfeitures under Federal Laws.

§ 1047, R. S., Comp. St. 1901, p. 727, Rose's Code, § 881, 3 F. S. A. 100. "No suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States, shall be maintained, except in cases where it is otherwise specially provided, unless the same is commenced within five years from the time when the penalty or forfeiture accrued: *Provided,* That the person of the offender, or the property liable for such penalty or forfeiture, shall, within the same period, be found within the United States; so that the proper process therefor may be instituted and served against such person or property." [2]

§ 399. Penalties and Forfeitures under Customs Revenue Laws.

§ 22, Act June 22, 1874, ch. 391, 18 Stat. at L. 190, Comp. St. 1901, p. 727, Rose's Code, § 882, 2 F. S. A. 761. "That no suit or action to recover any pecuniary penalty or forfeiture of property accruing under the customs revenue laws of the United States shall be instituted unless such suit or action shall be commenced within three years after the time when such penalty or forfeiture shall have accrued: *Provided,* That the time of the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation."

§ 400. Settlements for Customs Duties.

§ 21, Act June, 22, 1874, ch. 391, 18 Stat. at L. 190, Comp. St. 1901, p. 1986, Rose's Code, § 875, 2 F. S. A. 760. "That whenever any goods, wares, and merchandise shall have been entered and passed free of duty, and whenever duties upon any imported goods, wares, and merchandise shall have been liquidated and paid, and such goods, wares, and merchandise shall have been delivered to the owner, importer, agent, or consignee, such entry and passage free of duty and such settlement of duties shall, after the expiration of one year from the time of entry, in the absence of fraud and in the absence

[2] See 4 F. S. A. 865, United States v. Smith, etc., Co., 184 Fed. 532; United States v. Guest, 143 Fed. 456, 74 C. C. A. 590; Carter v. New Orleans, 143 Fed. 99, 74 C. C. A. 293; United States v. Witteman 152 Fed. 377, 81 C. C. A. 503; City of Atlanta v. Chattan. Foundry Wks., 101 Fed. 900; United States v. One Dark Bay Horse, 130 Fed. 240.

of protest by the owner, importer, agent, or consignee, be final and conclusive upon all parties."

§ 401. Forfeiture or Penalty under Copyright Laws.

§ 4968, R. S., Comp. St. 1901, p. 3416, Rose's Code, § 871, 2 F. S. A. 271. "No action shall be maintained in any case of forfeiture or penalty under the copyright laws, unless the same is commenced within two years after the cause of action has arisen."

§ 402. Forfeitures and Damage Suits for False Claims against United States.

§ 3494, R. S., Comp. St. 1901, 2329, Rose's Code, § 883, 2 F. S. A. 31. "Every such suit shall be commenced within six years from the commission of the act, and not afterward."

Prosecutions for enforcing punishment by fine or imprisonment under § 5438, R. S., are governed by the limitations imposed by the 32d section of the act, April 20, 1790, 1 Stat. at L. 119; 14 Op. Atty. Gen. 54.

§ 403. Claims against United States.

§ 156, Judicial Code,[a] *36 Stat. at L. 1139, Comp. St. 1911, p. 202, 1912 Supp. F. S. A. v. 1, p. 204, 36 Stat. at L. 1139.* "Every claim against the United States, cognizable by the court of claims, shall be forever barred, unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the secretary of the Senate or the clerk of the House of Representatives, as provided by law, within six years after the claim first accrues: *Provided,* That the claims of married women first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased; but no other disability than those

[a] Re-enacting § 1069, R. S., Rose's Code, § 874, Foster's Fed. Prac. (4th ed.) p. 1703, Comp. St. 1901, p. 740. 2 F. S. A. 65, which section is repealed by § 297, Judicial Code. In general, Cherokee Nation & United States v. Whitmire, 223 U. S. 108, 56 L. ed. 370, 32 Sup. Ct. Rep. 200.

enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively."

See also subd. twentieth, § 24, Judicial Code quoted as § 194.

§ 404. Recovery of Taxes Wrongfully Collected.

§ *3227, R. S., Comp. St. 1901, p. 2089, Rose's Code,* § *876, 3 F. S. A. 603.* "No suit or proceeding for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court, unless the same is brought within two years next after the cause of action accrued: *Provided,* That actions for such claims which accrued prior to June 6, 1872, may be brought within one year from said date; and that where any such claim was pending before the Commissioner, as provided in the preceding section, an action thereon may be brought within one year after such decision, and not after. But no right of action which was already barred by any statute on the said date shall be revived by this section."

§ *3228, R. S., Comp. St. 1901, p. 2089, Rose's Code,* § *877, 3 F. S. A. 603.* "*All claims for the refunding* of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be construed to revive any right of action which was already in two years next after the cause of action accrued: *Provided,* That claims which accrued prior to June 6, 1872, may be presented to the Commissioner at any time within one year from said date. But nothing in this section shall be construed to revive any right of action which was already barred by any statute on that date."

§ 405. Suits by United States to Vacate Land Patents.

Pt. § *8, Act March 3. 1891, ch. 561, 26 Stat. at L. 1099 (1093) Comp. St. 1901, p. 1521, Rose's Code,* § *878, 6 F. S. A. 526.* "That suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant shall only be brought within

five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents, and the limitation of section eight of chapter five hundred and sixty-one of the acts of the second session of the Fifty-first Congress and amendments thereto is extended accordingly as to the patents herein referred to."

§ 406. Suits by United States to Vacate Railway or Wagon Road Patents.

§ *1, March 2, 1896, ch. 39, 29 Stat. at L. 42, Comp. St. 1901, p. 1603, Rose's Code,* § *879, 6 F. S. A. 449–450.* "That suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents, and the limitation of section eight of chapter five hundred and sixty-one of the acts of the second session of the Fifty-first Congress and amendments thereto is extended accordingly as to the patents herein referred to. But no patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed: *Provided,* That no suit shall be brought or maintained, nor shall recovery be had for lands or the value thereof, that were certified or patented in lieu of other lands covered by a grant which were lost or relinquished by the grantee in consequence of the failure of the government or its officers to withdraw the same from sale or entry."

§ 407. Suits by Patentee of Lands Patented to Indians.

§ *1, Act May 31, 1902, ch. 946, 32 Stat. at L. 284, Rose's Code,* § *880, 3 F. S. A. 504–5.* "That in all actions brought in any state court or United States court by any patentee, his heirs, grantees, or any person claiming under such patentee, for the possession or rents or profits of lands patented in severalty to the members of any tribe of Indians under any treaty between it and the United States of America, where a deed has been approved by the Secretary of the Interior to the land sought to be recovered, the statutes of limitations of the states in which said land is situate shall be held to apply, and it shall be a complete defense to such action that

the same has not been brought within the time prescribed by the statutes of said state the same as if such action had been brought for the recovery of land patented to others than members of any tribe of Indians."

§ 408. Under Employers' Liability Act.

§ 6, Act April 22, 1908, ch. 149, 35 Stat. at L. 66, Comp. St. 1911, p. 1324, 1909 Supp. F. S. A. 585. "That no action shall be maintained under this act unless commenced within two years from the day the cause of action accrued."

§ 409. Action for Neglect to Prevent Conspiracy against Civil Rights.

Pt. § 1981, R. S., Comp. St. 1901, p. 1263, Rose's Code, § 872, 1 F. S. A. 798. ". . . But no action under the provision of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

§ 410. Infringement of Patent.

Pt. § 4921, R. S., Comp. St. 1901, p. 3395, 5 F. S. A. 577. ". . . But in any suit or action brought for the infringement of any patent, there shall be no recovery of profits or damages for any infringement committed in the six years before the filing of the bill of complaint or the issuing of the writ in such suit or action, and this provision shall apply to existing causes of action."

§ 411. Infringement of Copyrights. Actions for infringements of copyrights,[3] except in a case of forfeiture or penalty under copyright laws governed by § 4968, R. S.,[4] are governed by state statutes of limitation.[5]

§ 412. Liability of Stockholders of National Banks.

Under § 2 of the Act June 30, 1876, ch. 156, 19 Stat. at L. 63, Comp. St. 1901, p. 3509, 5 F. S. A. 106–7, Rose's Code, 964. This

[3] Patterson v. J. S. Ogilvie Publishing Co. 119 Fed. 451; Wheeler v. Cobbey, 70 Fed. 487, under § 4964, R. S.

[4] § 401, supra.

[5] Rose's Code, § 893, Citing Brady v. Daly, 175 U. S. 158, 44 L. ed. 109, 20 Sup. Ct. Rep. 66.

action is governed by the state statute of limitations, but it does not begin to run until the amount of the stockholders' liability has been ascertained and assessed by the Comptroller of Currency.[6]

§ 413. Interstate Commerce Act.

Pt. § 16, Interstate Commerce Act, 1912 Supp. F. S. A. v. 1, p. 123. "A petition for the enforcement of an order for the payment of money shall be filed in the circuit (now district) court or any state court within one year from the date of the order and not after."

[6] Rankin v. Barton, 199 U. S. 228, 50 L. ed. 163, 26 Sup. Ct. Rep. 29. See also McClaine v. Rankin, 49 L. ed. 702, 197 U. S. 154, 25 Sup. Ct. Rep. 410, 3 Ann. Cas. 500.

CHAPTER 14.

EVIDENCE.

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§ 420. In General. Equity Rule 46 provides that "in all trials in equity the testimony of witnesses shall be taken orally in open court, except as otherwise provided by statute or these rules. The court shall pass on the admissibility of all evidence offered as in actions at law. . . ."

§ 861, R. S., provides that "the mode of proof in the trials of actions at common law shall be by oral testimony and by examination of witnesses in open court, except as hereinafter provided."

§ 721, R. S., provides that, except as otherwise provided, the laws of the several states "shall be regarded as the rules of decision in trials at common law."

The last-mentioned section has been held to apply to rules of evidence prescribed by the laws of the state in which the Federal court was sitting.[1] The laws of the state relating to evidence means not only the statutes of the state, but also the decisions of its highest courts respecting rules of evidence,[2] but not as to common-law rules of evidence.[3]

The decided tendency in both law and equity is to conform to state rules of evidence as is indicated by the new rule 46, above mentioned, and recent amendment § 858, R. S., as to competency of witnesses.[4]

[1] Parker v. Moores, 111 Fed. 470; note 4 F. S. A. 1st col. p. 522.
[2] Nashua Savings Bank v. Anglo-American Land Co. 189 U. S. 228, 47 L. ed 782, 23 Sup. Ct. Rep. 517; note 4 F. S. A. 2nd col. p. 518.
[3] Union Pac. R. Co. v. Yates, 79 Fed. 588, 25 C. C. A. 103, 40 L.R.A. 553.
[4] § 470, infra.

The Federal courts do not, however, follow the state practice, allowing the examination of a party before trial,[5] except in ordering a surgical examination of the person of the plaintiff in an action for personal injuries,[6] and not then when there is no state statute.[7]

Discovery by the production of books and papers in common-law actions is governed by § 724, R. S.,[8] and in equity by Equity Rule 58.[9]

State laws have been followed as to printed copies of state laws being prima facie evidence thereof.[10] § 905, R. S., provides for the authentication of state laws,[11] although it has not been held mandatory and the statutes of Pennsylvania were admitted in the District of Columbia, though not so authenticated.[12]

So, also the state law was followed as to exemption from process of a witness in attendance on court.[13]

But state laws will not be followed where the Federal statutes make other provisions.[14]

This chapter contains a number of special Federal statutes on evidence.

§ 421. Statutes of United States—Evidence of—Little and Brown's Edition.

§ 908, R. S., Comp. Stat. 1901, 678, 7 F. S. A. 138, Rose's Code, § 1808. "The edition of the Laws and Treaties of the United States, published by Little & Brown, shall be competent evidence of the several public and private acts of Congress, and of the several treaties therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United

5 Ex parte Fiske, 113 U. S. 713, 28 L. ed. 1117, 5 Sup. Ct. Rep. 724; note 3 F. S. A. 1st col. p. 7.

6 Camden, etc. Ry. Co. v. Stetson, 177 U. S. 172, 44 L. ed. 721, 20 Sup. Ct. Rep. 617.

7 Union Pac. etc. Ry. Co. v. Botsford, 141 U. S. 250, 35 L. ed. 734, 11 Sup. Ct. Rep. 1000.

8 § 711, infra.

9 §§ 862, 870, infra.

10 Beatrice v. Edminston, 117 Fed. 427, 54 C. C. A. 606.

11 § 424, infra.

12 Conn. etc., Bank v. Patterson, 2 Cranch, 346, Fed. Cas. No. 3,056.

13 Ex parte Levi, 28 Fed. 651.

14 Potter v. National Bank, 102 U. S. 165, 26 L. ed. 111.

States, and of the several states, without any further proof or authentication thereof."

§ 422. Same—Supplement of Revised Statutes.

§ 3 of Act April 9, 1890, ch. 73, 26 Stat. at L. 50, Comp. Stat. 1901, p. 2589, 7 F. S. A. 139, Rose's Code, § 1810. "The publication herein authorized shall be taken to be prima facie evidence of the laws therein contained, but shall not change nor alter any existing law, nor preclude reference to nor control in case of any discrepancy, the effect of any original act passed by Congress."

§ 423. Same—Richardson's Supplement of Revised Statutes.

Pt. Joint Resolution June 7, 1880, No. 44, 21 Stat. at L. 308, Comp. Stat. 1901, p. 2587, 7 F. S. A. 139, Rose's Code, 1809. "The publication herein authorized shall be taken to be prima facie evidence of the laws therein contained in all the courts of the United States, and of the several states and territories therein; but shall not preclude reference to, nor control, in case of any discrepancy, the effect of any original acts as passed by Congress: *Provided,* That nothing herein contained shall be construed to change or alter any existing law."

§ 424. Proof State and Foreign Legislative Acts and State Court Records and Proceedings.

§ 905, R. S., Comp. Stat. 1901, p. 677, Rose's Code, § 1803, 3 F. S. A. 37. "The acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory, or country affixed thereto. The records and judicial proceedings of the courts of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings so authenticated shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken."

§ 425. Exemplified Copies Records of Public Offices, Not Appertaining to a Court in States and Territories.

§ 906, R. S., Comp. Stat. 1901, p. 677, 3 F. S. A. 39, Rose's Code, § 1804. "All records and exemplifications of books, which may be kept in any public office of any state or territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other state or territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor or secretary of state, the chancellor or keeper of the great seal of the state, or territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if given by such governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the state, territory, or county aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the state, territory, or country, as aforesaid, from which they are taken."

§ 426. Copies of Foreign Records Filed in Department Offices Relating to Land Titles in United States.

§ 907, R. S., Comp. Stat. 1901, p. 678, 3 F. S. A. 40, Rose's Code, § 1806. "It shall be lawful for any keeper or person having the custody of laws, judgments, orders, decrees, journals, correspondence, or other public documents of any foreign government or its agents, relating to the title to lands claimed by or under the United States, on the application of the head of one of the departments, the Solicitor of the Treasury, or the Commissioner of the General Land Office, to authenticate copies thereof under his hand and seal, and to certify them to be correct and true copies of such laws, judgments, orders, decrees, journals, correspondence, or other

public documents, respectively; and when such copies are certified by an American minister or consul, under his hand and seal of office, to be true copies of the originals, they shall be sealed up by him and returned to the Solicitor of the Treasury, who shall file them in his office, and cause them to be recorded in a book to be kept for that purpose. A copy of any such law, judgment, order, decree, journal, correspondence, or other public document, so filed, or of the same so recorded in said book, may be read in evidence in any court, where the title to land claimed by or under the United States may come into question, equally with the originals."

§ 427. Copies—Extracts from Journals of Congress Certified.

§ 895, R. S., Comp. Stat. 1901, p. 673, Rose's Code, § 1798, 3 F. S. A. 34. "Extracts from the journals of the Senate, or of the House of Representatives, and of the Executive Journal of the Senate when the injunction of secrecy is removed, certified by the secretary of the Senate or by the clerk of the House of Representatives, shall be admitted as evidence in the courts of the United States, and shall have the same force and effect as the originals would have if produced and authenticated in court."

§ 428. Pamphlet Copies of Statutes and Bound Copies of Acts.

Pt. § 73, Act Jan. 12, 1895, ch. 23, 28 Stat. at L. 615, Comp. Stat. 1901, p. 3766, 7 F. S. A. 139, Rose's Code, § 1812. "The pamphlet copies of the statutes and the bound copies of the acts of each Congress shall be legal evidence of the laws and treaties therein contained in all the courts of the United States and of the several states therein."

§ 429. Printed and Bound Copies of Acts.

§ 8, Act June 20, 1874, ch. 333, 18 Stat. at L. 113, Comp. Stat. 1901, p. 3757, 7 F. S. A. 138, Rose's Code, 1811. "The said printed copies of the said acts of each session and of the said bound copies of the acts of each Congress shall be legal evidence of the laws and treaties therein contained, in all the courts of the United States and of the several states therein."

§ 430. Copies—Lost or Destroyed Judicial Records.

§ *899, R. S., Comp. Stat. 1901, p. 675, Rose's Code, § 387, 3 F. S. A. 35.* "When the record of any judgment, decree, or other proceeding of any court of the United States is lost or destroyed, any party or person interested therein may, on application to such court, and on showing to its satisfaction that the same was lost or destroyed without his fault, obtain from it an order authorizing such defect to be supplied by a duly certified copy of the original record, where the same can be obtained; and such certified copy shall thereafter have, in all respects, the same effect as the original record would have had."

§ 431. Restoration of Lost or Destroyed Judicial Records.

§ *900, R. S., Comp. Stat. 1901, p. 675, Rose's Code, § 388, 3 F. S. A. 35.* "When any such record is lost or destroyed, and the defect cannot be supplied as provided in the preceding section, any party or person interested therein may make a written application to the court to which the record belonged, verified by affidavit, showing such loss or destruction; that the same occurred without his fault or neglect; that certified copies of such record cannot be obtained by him; and showing also the substance of the record so lost or destroyed, and that the loss or destruction thereof, unless supplied, will or may result in damage to him. The court shall cause said application to be entered of record, and a copy of it shall be served personally upon every person interested therein, together with written notice that on a day therein stated, which shall not be less than sixty days after such service, said application will be heard; and if, upon such hearing, the court is satisfied that the statements contained in the application are true, it shall make and cause to be entered of record an order reciting the substance and effect of said lost or destroyed record. Said order shall have the same effect, so far as concerns the party or person making such application and the persons served as above provided, but subject to intervening rights, which the original record would have had if the same had not been lost or destroyed."

§ 432. Copies—Lost Supreme Court Record.

§ *901, R. S., Comp. Stat. 1901, p. 675, Rose's Code, § 389, 3 F. S. A. 35.* "When any cause has been removed

to the Supreme Court, and the original record thereof is afterward lost, a duly certified copy of the record remaining in said court may be filed in the court from which the cause was removed, on motion of any party or person claiming to be interested therein; and the copy so filed shall have the same effect as the original record would have had if the same had not been lost or destroyed."

§ 433. Restoration of Records—Service of Notice on Nonresidents.

§ 902, R. S., Comp. Stat. 1901, p. 676, Rose's Code, § 390, 3 F. S. A. 35. "In any proceedings in conformity with law to restore the records of any court of the United States which have been or may be hereafter lost or destroyed, the notice required may be served on any nonresident of the district in which such court is held anywhere within the jurisdiction of the United States, or in any foreign country; the proof of service of such notice, if made in a foreign country, to be certified by a minister or consul of the United States in such country, under his official seal."

§ 434. Copies—Lost Returns and Official Papers—Judicial Officers.

§ 903, R. S., Comp. Stat. 1901, p. 676, Rose's Code, § 391, 3 F. S. A. 36. "A certified copy of the official return, or any other official paper of the United States attorney, marshal, or clerk, or other certifying or recording officer of any court of the United States, made in pursuance of law, and on file in any department of the government, relating to any cause or matter to which the United States was a party in any such court, the record of which has been or may be lost or destroyed, may be filed in the court to which it appertains, and shall have the same force and effect as if it were an original report, return, paper, or other document made to or filed in such court; and in any case in which the names of the parties and the date and amount of judgment or decree shall appear from such return, paper, or document, it shall be lawful for the court in which they are filed to issue the proper process to enforce such decree or judgment, in the same manner as if the original record remained in said court. And in all cases where any of the files, papers, or records of any court of the United States have been or shall be lost or destroyed, the files, records, and papers which, pur-

suant to law, may have been or may be restored or supplied in place of such records, files, and papers, shall have the same force and effect, to all intents and purposes, as the originals thereof would have been entitled to."

§ 435. Restoration of Records in which United States are Interested by United States' Attorneys.

§ *904, R. S., Comp. Stat. 1901, p. 676, Rose's Code, §§ 392, 531, 597, 3 F. S. A. 36.* "That whenever any of the records or files in which the United States are interested of any court of the United States have been or may be lost or destroyed, it shall be the duty of the attorney of the United States for the district court to which such files and records belong, so far as the judges of such courts respectively shall deem it essential to the interests of the United States that such records and files to (*sic*) be restored or supplied, to take such steps, under the direction of said judges, as may be necessary to effect such restoration or substitution, including such dockets, indices, and other books and papers as said judge (s) shall think proper. Said judges may direct the performance, by the clerks of said courts respectively and by the United States' attorneys, of any duties incident thereto; and said clerks and attorneys shall be allowed such compensation for services in the matter and for lawful disbursements as may be approved by the Attorney General of the United States, upon a certificate by the judges of said courts stating that such claim for services and disbursements is just and reasonable; and the sum so allowed shall be paid out of the judiciary fund."

§ 436. Copies—Executive Department Records, etc.

§ *882, R. S., Comp. Stat. 1901, p. 669, Rose's Code, § 1777, 3 F. S. A. 26.* "Copies of any books, records, papers, or documents in any of the Executive Departments, authenticated under the seals of such Departments, respectively, shall be admitted in evidence equally with the originals thereof."

§ 437. Copies—Solicitor of the Treasury Records, etc.

§ *883, R. S., Comp. Stat. 1901, p. 669, Rose's Code, § 1778, 3 F. S. A. 27.* "Copies of any documents, records, books, or papers in the office of the solicitor of the Treasury, certified by him under the seal of his office, or, whenever

his office is vacant, by the officer acting as solicitor for the time, shall be evidence equally with the originals."

§ 438. Copies—Comptroller of the Currency—Records, etc.

§ 884, R. S., Comp. Stat. 1901, p. 669, Rose's Code, § 1780, 3 F. S. A. 27. "Every certificate, assignment, and conveyance executed by the Comptroller of the Currency, in pursuance of law, and sealed with his seal of office, shall be received in evidence in all places and courts; and all copies of papers in his office, certified by him and authenticated by the said seal, shall in all cases be evidence equally with the originals. An impression of such seal directly on the paper shall be as valid as if made on wax or wafer."

§ 439. Copies—National Bank Organization Certificates.

§ 885, R. S., Comp. Stat. 1901, p. 670, Rose's Code, § 1781, 3 F. S. A. 27. "Copies of the organization certificate of any national banking association, duly certified by the Comptroller of the Currency, and authenticated by his seal of office, shall be evidence in all courts and places within the jurisdiction of the United States of the existence of the association, and of every matter which could be proved by the production of the original certificate."

§ 440. Copies—Bonds, Contracts, and Other Papers of United States in Settlement of Accounts with Government.

Pt. § 886, R. S., Comp. Stat. 1901, p. 670, Pt. Rose's Code, § 1782, 3 F. S. A. 27. ". . . And all copies of bonds, contracts, or other papers relating to, or connected with, the settlement of any account between the United States and an individual, when certified by the register or by such auditor, as the case may be, to be true copies of the originals on file, and authenticated under the seal of the Department, may be annexed to such transcripts, and shall have equal validity, and be entitled to the same degree of credit which would be due to the original papers if produced and authenticated in court: *Provided,* That where suit is brought upon a bond or other sealed instrument, and the defendant pleads *non est factum,* or makes his motion to the court, verifying such plea or motion by his oath, the court may take the same into consideration, and, if it appears to be necessary

for the attainment of justice, may require the production of the original bond, contract, or other paper specified in such affidavit."

§ 441. Copies—Treasury, War, Navy, Records in Suits against Delinquents.

Pt. § 886, R. S., Comp. St. 1901, p. 670, Pt. Rose's Code, § 1782, 3 F. S. A. 27. "When suit is brought in any case of delinquency of a revenue officer, or other person accountable for public money, a transcript from the books and proceedings of the Treasury Department, certified by the register and authenticated under the seal of the Department, or, when the suit involves the accounts of the War or Navy Departments, certified by the auditors respectively charged with the examination of those accounts, and authenticated under the seal of the Treasury Department, shall be admitted as evidence, and the court trying the cause shall be authorized to grant judgment and award execution accordingly. . . ."

§ 442. Same—Certification of Copies to be Made by Secretary or an Assistant Secretary of the Treasury under Seal of Department.

Act Mar. 2, 1895, ch. 177, 28 Stat. at L. 209, 3 F. S. A. 28, 2 F. S. A. 211, Comp. Stat. 1901, p. 671, Rose's Code, 1783. "The transcripts from the books and proceedings of the Department of the Treasury and the copies of bonds, contracts, and other papers provided for in section eight hundred and eighty-six of the Revised Statutes shall hereafter be certified by the Secretary or an Assistant Secretary of the Treasury under the seal of the Department."

§ 443. Copies, Treasury Department Books and Proceedings in Embezzlement Suits.

§ 887, R. S., Comp. Stat. 1901, p. 671, Rose's Code, § 1784, 3 F. S. A. 30. "Upon the trial of any indictment against any person for embezzling public moneys, it shall be sufficient evidence, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury Department, as provided by the preceding section."

§ 444. Copies—Department of the Interior.

§ 888, R. S., Comp. Stat. 1901, p. 671, Rose's Code, § 1785, 3 F. S. A. 31. "A copy of any return of a contract returned and filed in the returns-office of the Department of the Interior, as provided by law, when certified by the clerk of the said office to be full and complete, and when authenticated by the seal of the Department, shall be evidence in any prosecution against any officer for falsely and corruptly swearing to the affidavit required by law to be made by such officer in making his return of any contract, as required by law, to said returns-office."

Under Reclamation Act. Act August 9, 1912, ch. 278, 37 Stat. at L. 267. ". . . the Secretary of the Interior shall make provision for furnishing copies of duly authenticated records of entries upon payment of reasonable fees, which copies shall be admissible in evidence, as are copies authenticated under section eight hundred and eighty-eight of the Revised Statutes."

Copies of Records—Department and its Several Bureaus. §§ 3 and 4 Act August 24, 1912, ch. 370, 37 Stat. at L. p. 492, § 3. That all authenticated copies furnished under this act shall be admitted in evidence equally with the originals thereof.

§ 4. That all officers who furnish authenticated copies under this act shall attest their authentication by the use of an official seal, which is hereby authorized for that purpose.

§ 445. Copies—Postoffice Records.

§ 889, R. S., Comp. Stat. 1901, p. 671, Rose's Code, § 1786, 3 F. S. A. 31. "Copies of the quarterly returns of postmasters and of any papers pertaining to the accounts in the office of the sixth auditor, and transcripts from the money-order account books of the Postoffice Department, when certified by the sixth auditor under the seal of his office, shall be admitted as evidence in the courts of the United States, in civil suits and criminal prosecutions; and in any civil suit, in case of delinquency of any postmaster or contractor, a statement of the account, certified as aforesaid, shall be admitted in evidence, and the court shall be authorized thereupon to give judgment and award execution, subject to the provisions of law as to proceedings in such civil suits."

§ 446. Copy—Postoffice Department Demand on Postmasters.

§ *890, R. S., Comp. Stat. 1901, p. 672, Rose's Code,* § *178, 3 F. S. A. 32.* "In all suits for the recovery of balances due from postmasters, a copy, duly certified under the seal of the sixth auditor, of the statement of any postmaster, special agent, or other person, employed by the Postmaster General or the auditor for that purpose, that he has mailed a letter to such delinquent postmaster at the postoffice where the indebtedness accrued, or at his last usual place of abode; that a sufficient time has elapsed for said letter to have reached its destination in the ordinary course of the mail; and that payment of such balance has not been received, within the time designated in his instructions, shall be received as sufficient evidence in the courts of the United States, or other courts, that a demand has been made upon the delinquent postmaster; but when the account of a late postmaster has been once adjusted and settled, and a demand has been made for the balance appearing to be due, and afterward allowances are made or credits entered, it shall not be necessary to make a further demand for the new balance found to be due."

§ 447. Copies—Land Office Records—Certification of.

By commissioner or principal clerk.

§ *891, R. S., Comp. Stat. 1901, p. 672, Rose's Code,* § *1788, 3 F. S. A. 32.* "Copies of any records, books, or papers in the General Land Office, authenticated by the seal and certified by the Commissioner thereof, or, when his office is vacant, by the principal clerk, shall be evidence equally with the originals thereof. And literal exemplifications of any such records shall be held, when so introduced in evidence, to be of the same validity as if the names of the officers signing and countersigning the same had been fully inserted in such record."

§ *2469, R. S., Comp. Stat. 1901, p. 1557, 3 F. S. A. 41, Rose's Code,* § *1789.* "The Commissioner of the General Land Office shall cause to be prepared, and shall certify, under the seal of the office, such copies of records, books, and papers on file in l's office as may be applied for, to be used in evidence in the courts of justice."

§ 2470, R. S., Comp. Stat. 1901, p. 1557, 3 F. S. A. 41, Rose's Code, § 1790. "Literal exemplification of any records which have been or may be granted in virtue of the preceding section shall be deemed of the same validity in all proceedings, whether at law or in equity, wherein such exemplifications are adduced in evidence, as if the names of the officers signing and countersigning the same had been fully inserted in such record."

By recorder of General Land Office.

Act Apr. 19, 1904, ch. 1396, 33 Stat. at L. 185, Comp. Stat. 1911, p. 273, 10 F. S. A. 354, Rose's Code, § 1793. "Copies of any patents, records, books, or papers in the General Land Office authenticated by the seal and certified by the recorder of such office shall be evidence equally with the originals thereof to the same force and effect as when certified by the Commissioner of said office."

By registers and receivers of land offices.

Act Mar. 22, 1904, ch. 748, 33 Stat. at L. 144, Comp. Stat. 1911, p. 573, 10 F. S. A. 355, Rose's Code, § 1791. "The transcripts thus furnished, when duly certified to by them, shall be admitted as evidence in all courts of the United States and the territories thereof, and before all officials authorized to receive evidence, with the same force and effect as the original records."

§ 448. Subpœna Duces Tecum to Register of Land Office.

Act April 19, 1904, ch. 1398, 33 Stat. at L. 186, Comp. Stat. 1911, p. 87, 10 F. S. A. 365, Rose's Code, § 1792. "Whenever the register of any United States land office shall be served with a subpœna duces tecum or other valid legal process requiring him to produce, in any United States court or in any court of record of any state, the original application for entry of public lands or the final proof of residence and cultivation or any other original papers on file in the General Land Office of the United States on which a patent to land has been issued or which furnish the basis for such patent, it shall be the duty of such register to at once notify the Commissioner of the General Land Office of the service of such process, specifying the particular papers he is required

to produce, and upon receipt of such notice from any register of a United States land office the Commissioner of the General Land Office shall at once transmit to such register the original papers specified in such notice, and which such register is required to produce, and to attach to such papers a certificate, under seal of his office, properly authenticating them as the original papers upon which patent was issued; and such papers so authenticated shall be received in evidence in all courts of the United States and in the several state courts of the states of the Union: *Provided,* That the Secretary of the Interior shall make rules and regulations to secure the return of such documents to the General Land Office, after use in evidence, without cost to the United States."

§ 449. Copies—Commissioner of Indian Affairs—Certification of.

Pt. § 3, Act July 26, 1892, ch. 256, 27 Stat. at L. 272, Comp. Stat. 1901, p. 263, 3 F. S. A. 338, Rose's Code, § 1779. "Copies of any public documents, records, books, maps, or papers belonging to or on the files of said office authenticated by the seal and certified by the Commissioner thereof, or by such officer as may, for the time being, be acting as or for such Commissioner, shall be evidence equally with the originals thereof."

§ 450. Copies—Patent Office Records, Letters Patent, etc.

§ 892, R. S., Comp. Stat. 1901, p. 673, Rose's Code, § 1794, 3 F. S. A. 33. "Written or printed copies of any records, books, papers, or drawings belonging to the Patent Office, and of letters patent authenticated by the seal and certified by the Commissioner or acting Commissioner thereof, shall be evidence in all cases wherein the originals could be evidence; and any person making application therefor, and paying the fee required by law, shall have certified copies thereof."

§ 451. Copies—Foreign Letters Patent.

§ 893, R. S., Comp. Stat. 1901, p. 673, Rose's Code, § 1795, 3 F. S. A. 33. "Copies of the specifications and drawings of foreign letters patent, certified as provided in the preceding section, shall be prima facie evidence of the fact of the granting of such letters patent, and of the date and contents thereof."

§ 452. Copies—Printed Copies of Specifications and Drawings of Patents.

§ 894, R. S., Comp. Stat. 1901, p. 673, Rose's Code, § 1796. "The printed copies of specifications and drawings of patents, which the Commissioner of Patents is authorized to print for gratuitous distribution, and to deposit in the capitols of the states and territories, and in the clerk's offices of the district courts, shall, when certified by him and authenticated by the seal of his office, be received in all courts as evidence of all matters therein contained."

§ 453. Copies—Patent Office Records—Trademarks.

Pt. § 11 of Act Feb. 20, 1905, ch. 592, 33 Stat. at L. 727, Comp. St. 1911, p. 1464, 10 F. S. A. 412, Rose's Code, § 1797. ". . . Written or printed copies of any records, books, papers, or drawings relating to trademarks belonging to the Patent Office, and of certificates of registration, authenticated by the seal of the Patent Office and certified by the Commissioner thereof, shall be evidence in all cases wherein the originals could be evidence; and any person making application therefor and paying the fee required by law shall have certified copies thereof."

§ 454. Copies—United States Consular Records.

§ 896, R. S., Comp. Stat. 1901, p. 674, Rose's Code, § 1799, 3 F. S. A. 34. "Copies of all official documents and papers in the office of any consul, vice consul, or commercial agent of the United States, and of all official entries in the books or records of any such office, certified under the hand and seal of such office, shall be admitted in evidence in the courts of the United States."

§ 455. Copies—United States Clerks' New Records in Certain States.

§ 897, R. S., Comp. Stat. 1901, p. 674, Rose's Code, § 1800, 3 F. S. A. 34. "The transcripts into new books, made by the clerks of the district courts in the several districts of Texas, Florida, Wisconsin, Minnesota, Iowa, and Kansas, in pursuance of the act of June twenty-seven, eighteen hundred and sixty-four, chapter one hundred and sixty-five, from the records and journals transferred by them respectively, under the said act, to the clerks of the circuit courts in

said districts, when certified by the clerks respectively making the same to be full and true copies from the original books, shall have the same force and effect as records as the originals. And the certificates of the clerks of said circuit courts, respectively, of transcripts of any of the books or papers so transferred to them, shall be received in evidence with the like effect as if made by the clerk of the court in which the proceedings were had."

§ 456. Copies—United States Clerks' New Records—North Carolina.

§ 898, R. S., Comp. Stat. 1901, p. 674, Rose's Code, § 1801, 3 F. S. A. 34. "The transcripts into new books made by the clerks of the circuit and district courts for the western district of North Carolina, in pursuance of the act of June four, eighteen hundred and seventy-two, chapter two hundred and eighty-two, when certified by the clerks respectively making the same to be full and true copies from the original books, shall have the same force and effect as records as the originals. And the certificates of the clerks of said circuit and district courts respectively, of transcripts of any of the said transcribed records, shall also be received in evidence with the like effect as if made by the proper clerk from the originals from which such records were transcribed."

§ 457. Judicial Notice Taken of the Seal of the Department of Commerce and Labor.

Pt. § 1, Act Feb. 14, 1903, ch. 552, 32 Stat. at L. 825, Comp. Stat. 1911, p. 114, 10 F. S. A. 58, Rose's Code, § 1807. "The said Secretary shall cause a seal of office to be made for the said Department of such device as the President shall approve, and judicial notice shall be taken of the said seal."

§ 458. Burden of Proof—Seizure Cases under Customs Duties Laws.

§ 909, R. S., Comp. Stat. 1901, p. 679, 3 F. S. A. 95, Rose's Code, § 1513. "(Burden of proof, when it lies on claimant in seizure cases.) In suits or informations brought, where any seizure is made pursuant to any act providing for or regulating the collection of duties on imports or tonnage, if the property is claimed by any person, the burden of proof shall lie upon such claimant: *Provided,* That prob-

able cause is shown for such prosecution, to be judged of by the court."

§ 459. Reports of Investigations of Accidents from Failure of Boilers—Not Admissible in Damage Suits.

Pt. § 8, Act Feb. 17, 1911, Ch. 103, Comp. St. 1911, p. 1337, 1912 Supp. F. S. A. v. 1, p. 342. "Neither said report nor any report of said investigation nor any part thereof shall be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report or investigation. (36 Stat. at L. 916.)"

§ 460. Government Paramount Title Does Not Affect Possessory Action Mining Titles.

§ 910, R. S., Comp. Stat. 1901, p. 679, 5 F. S. A. 35, Rose's Code, § 824. "No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States."

§ 461. Publication of Interstate Commerce Reports and Decisions as Evidence.

Pt. § 14, Act Feb. 19, 1903, ch. 708, 32 Stat. at L. 847, as amended June 29, 1906, ch. 3591, § 3, 34 Stat. at L. 589, 1909 Supp. F. S. A. 265, Rose's Code, § 1814. ". . . The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several states without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports."

§ 462. Proof of Signature and Handwriting.

Act February 26, 1913, ch. 79, 37 Stat. at L. 683. "In any proceeding before a court or judicial officer of the United States where the genuineness of the handwriting of any person may be involved, any admitted or proved handwriting of such person shall be competent evidence as a basis for comparison by witnesses, or by the jury, court, or officer conducting such proceeding, to prove or disprove such genuineness."

CHAPTER 15.

WITNESSES.

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§ 470. Competence of Witnesses Determined by State Laws.

§ 858, R. S., 34 Stat. at L. 618, Rose's Code, § 1735, Comp. St. 1911, p. 271, 1909 Supp. F. S. A. 708. "The competence of a witness to testify in any civil action, suit, or proceeding in the courts of the United States shall be determined by the laws of the state or territory in which the court is held."

The phrase "civil actions" includes all judicial controversies in which the rights of property are involved whether between private parties or such parties and the government.[1] An objection to the competency of a witness is waived, where such objection was not made at the time the witness was sworn nor at any time during trial.[2]

§ 471. Perjury Not Now a Disqualification.

§ 125 of the Penal Code, Comp. St. 1911, p. 1625, 1909 Supp. F. S. A. 437, supersedes § 5392, R. S., Rose's Code, § 1736, making perjury of a witness a disqualification. The new provision omits to make such a witness incompetent. So, also, subornation of perjury under § 126 of the Penal Code would not disqualify a witness.

§ 472. Not Disqualified by Claiming Compensation under Customs-Revenue Laws.

§ 8, Act June 22, 1874, ch. 391, Comp. St. 1901, p. 2021, 3 F. S. A. 43. "That no officer, or other person entitled to or claiming compensation under any provision of this act, shall be thereby disqualified from becoming a witness in any action, suit, or proceeding for the recovery, mitigation, or remission thereof, but shall be subject to examination and cross-examination in like manner with other witnesses, without being thereby deprived of any right, title, share, or interest in any fine, penalty, or forfeiture to which such examination may relate; and in every such case the defendant or defendants may appear and testify and be examined and cross-examined in like manner."

[1] Green v. United States, 9 Wall. 655, 19 L. ed. 806; United States v. Ten Thousand Cigars, Woolw. 123, Fed. Cas. No. 16,451.
[2] Bise v. United States, 144 Fed. 374, 74 C. C. A. 1, 7 Ann. Cas. 165.

§ 473. Officers and Informers Not Disqualified in Suits for Fines, Penalties, or Forfeitures.

§ *5295, R. S., Comp. Stat. 1901, p. 3608, 3 F. S. A. 106.* "Any officer or other person entitled to or interested in a part or share of any fine, penalty, or forfeiture incurred under any law of the United States, may be examined as a witness in any of the proceedings for the recovery of such fine, penalty, or forfeiture by either of the parties thereto, and such examination shall not deprive such witness of his share or interest in such fine, penalty, or forfeiture."

§ 474. Immunity of Witnesses in Cases under Commerce and Anti-Trust Laws.

Act June 30, 1906, ch. 3920, 34 Stat. at L. 798, Comp. St. 1911, p. 1319, 1909 Supp. F. S. A. 708. Extends "only to a natural person who, in obedience to a subpœna, gives testimony under oath or produces evidence, documentary or otherwise, under oath."

§ 475. Immunity in Criminal Cases.

Pt. 5th Amend. U. S. Const., Rose's Code, § 1738. "No person . . . shall be compelled in any criminal case to be a witness against himself."

The seizure or compulsory production of a man's private papers to be used against him is equivalent to compelling him to be a *witness against* himself.[3]

§ 476. Same—Testimony Given before Congress.

§ *859, R. S., Comp. Stat. 1901, p. 660, 3 F. S. A. 5, Rose's Code, § 1740.* "No testimony given by a witness before either House, or before any committee of either House of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege."

[3] Boyd v. United States, 116 U. S. 616, 29 L. ed. 746, 6 Sup. Ct. Rep. 524; In re Kanter, 117 Fed. 356.

§ 477. Same—Testimony in Judicial Proceedings.

§ 860, R. S., Comp. Stat. 1901, p. 661, 3 F. S. A. 5, Rose's Code, § 1741. "No pleading of a party, nor any discovery or evidence obtained from a party or witness by means of a judicial proceeding in this or any foreign country, shall be given in evidence, or in any manner used against him or his property or estate, in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture: *Provided,* That this section shall not exempt any party or witness from prosecution and punishment for perjury committed in discovering or testifying as aforesaid."

§ 478. Defendant as Witness in Criminal Proceedings.

Act March 16, 1878, ch. 37, 20 Stat. at L. 30, Comp. Stat. 1901, p. 660, 7 F. S. A. 1120, Rose's Code, § 1737. "That in the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors in the United States courts, territorial courts, and courts-martial, and courts of inquiry, in any state or territory, including the District of Columbia, the person so charged shall, at his own request, but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him."

§ 479. Compulsory Process for Witnesses in Criminal Cases.

Pt. Sixth Amend. U. S. Const. Rose's Code, § 1739. "In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor."

§ 480. Recognizance of Witnesses—Criminal Cases.

§ 879, R. S., Comp. Stat. 1901, p. 668, 7 F. S. A. 1123, Rose's Code, § 1745. "Any judge or other officer who may be authorized to arrest and imprison or bail persons charged with any crime or offense against the United States may, at the hearing of any such charge, require of any witness produced against the prisoner, on pain of imprisonment, a recognizance, with or without sureties, in his discretion, for his appearance to testify in the case. And where the crime or offense is charged to have been committed on the high seas,

or elsewhere within the admiralty and maritime jurisdiction of the United States, he may, in his discretion, require a like recognizance, with such sureties as he may deem necessary, of any witness produced in behalf of the accused, whose testimony in his opinion is important, and is in danger of being otherwise lost."

§ 481. Same—in Vermont.

§ 880, R. S., Comp. Stat. 1901, p. 668, 7 F. S. A. 1123, Rose's Code, § 1746. "In the district of Vermont, all recognizance of witnesses taken by any magistrate in said district, for their appearance to testify in any case cognizable either in the district or circuit court thereof, shall be to the circuit court next thereafter to be held in the said district."

§ 482. Same—On behalf of the United States by District Attorney.

§ 881, R. S., Comp. Stat. 1901, p. 669, 7 F. S. A. 1123, Rose's Code, § 1747. "Any judge of the United States, on the application of a district attorney, and on being satisfied by proof that the testimony of any person is competent and will be necessary on the trial of any criminal proceeding in which the United States are parties or are interested, may compel such person to give recognizance, with or without sureties, at his discretion, to appear to testify therein; and, for that purpose, may issue a warrant against such person, under his hand, with or without seal, directed to the marshal or other officer authorized to execute process in behalf of the United States, to arrest and bring before him such person. If the person so arrested neglects or refuses to give recognizance in the manner required, the judge may issue a warrant of commitment against him, and the officer shall convey him to the prison mentioned therein. And the said person shall remain in confinement until he is removed to the court for the purpose of giving his testimony, or until he gives the recognizance required by said judge."

§ 483. Subpœna for Witnesses in Another District.

§ 876, R. S., Comp. Stat. 1901, p. 667, 7 F. S. A. 1121, Rose's Code, § 1742. "Subpœnas for witnesses who are required to attend a court of the United States, in any district, may run into any other district: *Provided,* That in civil causes the witnesses living out of the district in which the

court is held do not live at a greater distance than one hundred miles from the place of holding the same."

In civil actions if a witness lives out of the district at a greater distance than one hundred miles from the place of holding court, his testimony must be taken by deposition.[4]

In criminal cases there seems to be no limit.[5]

§ 484. Subpœna and Attendance of Witnesses for United States.

§ *877, R. S., Comp. Stat. 1901, p. 667, 7 F. S. A. 1122, Rose's Code, § 1743.* "Witnesses who are required to attend any term of a district court on the part of the United States shall be subpœnaed to attend to testify generally on their behalf, and not to depart the court without leave thereof, or of the district attorney; and under such process they shall appear before the grand or petit jury, or both, as they may be required by the court or district attorney."

§ 485. Subpœna for Witnesses for Indigent Defendant in Criminal Cases.

§ *878, R. S., Comp. Stat. 1901, p. 668, 7 F. S. A. 1122, Rose's Code, § 1744.* "Whenever any person indicted in a court of the United States makes affidavit, setting forth that there are witnesses whose evidence is material to his defense; that he cannot safely go to trial without them; what he expects to prove by each of them; that they are within the district in which the court is held, or within one hundred miles of the place of trial; and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the court in term, or any judge thereof in vacation, may order that such witnesses be subpœnaed if found within the limits aforesaid. In such case the costs incurred by the process and the fees of the witness shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States."

§ 486. Enforcing Attendance and Testimony of Witnesses.

§ *4073, R. S., Comp. Stat. 1901, p. 2764, 3 F. S. A. 42,*

[4] Smith v. Chicago, etc., R. Co. 38 Fed. 321.
[5] United States v. Potter, Boyce U. S. Pr. 98, 27 Fed. Cas. No. 16,075.

Rose's Code, § 1752. "If any person shall refuse or neglect to appear at the time and place mentioned in the summons issued, in accordance with section forty hundred and seventy-one, or if upon his appearance he shall refuse to testify, he shall be liable to the same penalties as would be incurred for a like offense on the trial of a suit in the district court of the United States."

§ 487. Court's Power to Punish Witnesses for Contempt.

§ 268, Judicial Code,[a] *36 Stat. at L. 1163, Comp. St. 1911, p. 237, 1912 Supp. F. S. A. v. 1, p. 243.* "The said courts shall have power . . . to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: . . . the disobedience or resistance . . . by any . . . witness . . . to any lawful writ, process, order, rule, decree, or command of said courts."

§ 488. Fees and Mileage of Witnesses Who Testify.

§ 4074, R. S., Comp. Stat. 1901, p. 2764, 3 F. S. A. 42, 7 F. S. A. 1126, Rose's Code, §§ 728, 1753. "Every witness who shall so appear and testify shall be allowed, and shall receive from the party at whose instance he shall have been summoned, the same fees and mileage as are allowed to witnesses in suits depending in the district courts of the United States."

§ 489. Amount of Fees and Mileage of Witnesses.

§ 848, R. S., Comp. Stat. 1901, p. 654, 7 F. S. A. 1124, Rose's Code, § 725. "For each day's attendance in court, or before any officer pursuant to law, one dollar and fifty cents, and five cents a mile for going from his place of residence to the place of trial or hearing, and five cents a mile for returning. When a witness is subpœnaed in more than one cause between the same parties, at the same court, only one travel fee and one *per diem* compensation shall be allowed for attendance. Both shall be taxed in the case first disposed of, after which the *per diem* attendance fee alone shall be taxed in the other cases in the order in which they are disposed of.

[a] Re-enacting § 725, R. S., Rose's Code, § 807, Foster's Fed. Prac. (4th ed.) pp. 734, 890, 912, 1082, 1083, 1097, Comp. St. 1901, p. 583, 4 F. S. A. 549, which section is repealed by § 297, Judicial Code. In general, Merrimack River Sav. Bk. v. Clay Center, 219 U. S. 527, 55 L. ed. 320, 31 Sup. Ct. Rep. 295, Ann. Cas. 1912 A. 512

"When a witness is detained in prison for want of security for his appearance, he shall be entitled, in addition to his subsistence, to a compensation of one dollar a day."

§ 490. Double Mileage for Witnesses Prohibited.

§ *1, Act May 27, 1908, Ch. 200, Comp. St. 1911, p. 270, 1909 Supp. F. S. A. 709.* "That no constructive or double mileage fees shall be allowed by reason of any person being summoned as both a witness and juror, or as a witness in two or more cases pending in the same court and triable at the same term thereof."

§ 491. Subpœna for Witnesses in Contested Patent Cases.

§ *4906, R. S., Comp. Stat. 1901, p. 3390, 7 F. S. A. 1128, Rose's Code,* § *1748.* "The clerk of any court of the United States, for any district or territory wherein testimony is to be taken for use in any contested case pending in the Patent Office, shall, upon the application of any party thereto, or of his agent or attorney, issue a subpœna for any witness residing or being within such district or territory, commanding him to appear and testify before any officer in such district or territory authorized to take depositions and affidavits, at any time and place in the subpœna stated. But no witness shall be required to attend at any place more than forty miles from the place where the subpœna is served upon him."

§ 492. Enforcing Attendance and Testimony of Witnesses in Patent Cases.

§ *4908, R. S., Comp. Stat. 1901, p. 3390, 7 F. S. A. 1128, Rose's Code,* § *1749.* "Whenever any witness, after being duly served with such subpœna, neglects or refuses to appear, or after appearing refuses to testify, the judge of the court whose clerk issued the subpœna may, on proof of such neglect or refusal, enforce obedience to the process, or punish the disobedience, as in other like cases. But no witness shall be deemed guilty of contempt for disobeying such subpœna, unless his fees and traveling expenses in going to, returning from, and one day's attendance at the place of the examination, are paid or tendered him at the time of the service of the subpœna; nor for refusing to disclose any secret invention or discovery made or owned by himself."

§ 493. Fees of Witnesses in Patent Cases.

§ *4907, R. S., Comp. St. 1901, p. 3390, 5 F. S. A. 501, 7 F. S. A. 1128.* "Every witness duly subpœnaed and in attendance shall be allowed the same fees as are allowed to witnesses attending the courts of the United States."

§ 494. Subpoena to Witnesses in Claim Cases against United States Pending in Departments.

§ *184, R. S., Comp. St. 1901, p. 92, 2 F. S. A. 5.* "Any head of a department or bureau in which a claim against the United States is properly pending may apply to any judge or clerk of any court of the United States, in any state, district, or territory, to issue a subpœna for a witness being within the jurisdiction of such court, to appear at a time and place in the subpœna stated, before any officer authorized to take depositions to be used in the courts of the United States, there to give full and true answers to such written interrogatories and cross-interrogatories as may be submitted with the application, or to be orally examined and cross-examined upon the subject of such claim."

§ 495. Enforcing Attendance and Testimony of Witnesses in Claim Cases against United States Pending in Departments.

§ *186, R. S., Comp. St. 1901, p. 93, 2 F. S. A. 6.* "If any witness, after being duly served with such subpœna, neglects or refuses to appear, or, appearing, refuses to testify, the judge of the district in which the subpœna issued may proceed, upon proper process, to enforce obedience to the subpœna, or to punish the disobedience in like manner as any court of the United States may do in case of process of subpœna *ad testificandum* issued by such court."

§ 496. Fees of Witnesses in Claim Cases against United States Pending in Departments.

§ *185, R. S., Comp. St. 1901, p. 93, 2 F. S. A. 6.* "Witnesses subpœnaed pursuant to the preceding section shall be allowed the same compensation as is allowed witnesses in the courts of the United States."

§ 497. Compulsory Attendance of Witnesses under Interstate Commerce Act.

Pt. § 3, Act Feb. 19, 1903, Ch. 708, 32 Stat. at L. 848,

Comp. St. 1911, p. 1312, 10 F. S. A. 172. "And in proceedings under this act and the acts to regulate commerce, the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in such proceeding."

§ 498. Compulsory Attendance of Witnesses under Income Tax Law.

§ *3176 Subd. K, Act Oct. 3, 1913, ch 16, 38 Stat. at L. p. 179.* "That jurisdiction is hereby conferred upon the district courts of the United States for the district within which any person summoned under this section to appear and testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate process."

CHAPTER 16.

DEPOSITIONS.

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§ 500. In General. Depositions in law actions can only be taken on grounds specified in the Federal statutes, and in equity

"when allowed by statute or for good and exceptional cause for departing from the general rule." (Equity Rule 47.) [1]

The Federal statutes authorize two classes of depositions: (1) On notice, *de bene esse,* that is to say, provisionally anticipating that it will be impossible to produce the witness in open court for the reasons specified in § 863, R. S.; [2] (2) on commission under § 866, R. S.[3]

The manner of taking these depositions is specified for *de bene esse* in §§ 863–865, R. S.,[4] and on commission in §§ 866, 868, 869, 870, R. S.; [5] the latter kind of depositions not being affected by §§ 863–4–5, R. S. Depositions may also be taken under act March 9, 1892, ch. 14,[6] in the mode, though not on the grounds, prescribed by the laws of the state, and under § 867, R. S.,[7] a Federal court in its discretion may admit in evidence in any cause before it any deposition taken *in perpetuam rei memoriam,* under state law.

Depositions in equity may also be taken under order of court.[8]

Letters rogatory or on commission are used to obtain testimony of witnesses in foreign countries.[9]

Depositions may be taken to be used in foreign countries under §§ 4071, 4072, R. S.[10]

§ 501. Time for Taking Depositions at Law. At law depositions may be taken at any time after the complaint is filed, either before or after issue. The statute does not designate the time for taking. In providing for special notice whenever by reason of want of an attorney of record the giving of notice as therein required shall be impracticable, the statute implies that such depositions may be taken before issue joined.

§ 502. Time for Taking Depositions in Equity.

Equity Rule 54.[a] "After a cause is at issue, depositions may be taken as provided by §§ 863, 865, 866, and 867,

1 § 504, infra. 2 § 505, infra. 3 § 514, infra.
4 §§ 506–7–8–9, infra. 5 §§ 514–5–6–7, infra. 6 § 519, infra.
7 § 518, infra. 8 §§ 504, 510, 511, 512, 520, 521, 522, infra.
9 § 523, infra. 10 §§ 524–5, infra.

a See Equity Rule 54 with Annotations, in Appendix, post.

Revised Statutes. But if in any case no notice has been given the opposite party of the time and place of taking the deposition, he shall, upon application and notice, be entitled to have the witness examined orally before the court or to a cross-examination before an examiner or like officer, or a new deposition taken with notice, as the court or judge under all the circumstances shall order."

It will be noted from the above, that depositions taken in equity suits *de bene esse* or on commission under the Federal statutes are only so taken after the cause is at issue. If necessity exists for taking depositions before cause is at issue, such depositions should be taken under Rule 47 on affidavit showing good and exceptional cause for departing from the general rule and an order of court specifying the notice and terms for taking.

Time for taking depositions in equity after issue is set out in the following section:

§ 503. Same—Depositions in Equity after Issue.

Last Pt. Equity Rule 47.[b] ". . . All depositions taken under a statute, or under any such order of the court, shall be taken and filed as follows, unless otherwise ordered by the court or judge for good cause shown: Those of the plaintiff within sixty days from the time the cause is at issue; those of the defendant within thirty days from the expiration of the time for the filing of plaintiff's depositions; and rebutting depositions by either party within twenty days after the time for taking original depositions expires."

§ 504. Grounds for Depositions in Equity: When Allowed by Statute, or for Good and Exceptional Cause.

First Pt. Equity Rule 47.[c] "The court, upon application of either party, when allowed by statute, or for good and exceptional cause for departing from the general rule, to be shown by affidavit, may permit the deposition of named witnesses, to be used before the court or upon a reference to a master, to be taken before an examiner or other named officer, upon the notice and terms specified in the order. . . ."

[b] See Equity Rule 47, with Annotations, in Appendix, post.
[c] See Equity Rule 47, with Annotations, in Appendix, post.

§ 505. Depositions de Bene Esse—Conditions for Taking and Using.

Pt. § 863, R. S., Comp. Stat. 1901, p. 661, 3 F. S. A. 8, Rose's Code, § 1761. "The testimony of any witness may be taken in any civil cause depending in a district or circuit court by deposition *de bene esse,* when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of the district in which the case is to be tried, and to a greater distance than one hundred miles from the place of trial, before the time of trial, or when he is ancient and infirm. . . ."

Last Pt. § 865, R. S., Comp. Stat. 1901, p. 663, 3 F. S. A. 17. ". . . But unless it appears to the satisfaction of the court that the witness is then dead, or gone out of the United States, or to a greater distance than one hundred miles from the place where the court is sitting, or that, by reason of age, sickness, bodily infirmity, or imprisonment, he is unable to travel and appear at court, such deposition shall not be used in the cause."

§ 506. Officers before Whom Depositions de Bene Esse May Be Taken.

Pt. § 863, R. S., Comp. Stat. 1901, p. 661, 3 F. S. A. 8. ". . . The deposition may be taken before any judge of any court of the United States, or any commissioner of a circuit court, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme court, mayor or chief magistrate of a city, judge of a county court or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the cause. . . ."

Notaries may take depositions.

Act Aug. 15, 1876, ch. 304, Comp. Stat. 1901, p. 663, 5 F. S. A. 379. "That notaries public of the several states, territories, and the District of Columbia be and they are hereby, authorized to take depositions, and do all other acts in relation to taking testimony to be used in the courts of the United States, take acknowledgments and affidavits, in the same manner and with the same effect as commissioner

of the United States circuit court may now lawfully take or do." (19 Stat. at L. 206.)

§ 507. Notice of Taking Depositions de Bene Esse.

Pt. § 863, R. S., Comp. Stat. 1901, p. 661, 3 F. S. A. 8.

". . . Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition, to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition; and in all cases *in rem*, the person having the agency or possession of the property at the time of seizure shall be deemed the adverse party, until a claim shall have been put in; and whenever, by reason of the absence from the district and want of an attorney of record or other reason, the giving of the notice herein required shall be impracticable, it shall be lawful to take such depositions as there shall be urgent necessity for taking, upon such notice as any judge authorized to hold courts in such circuit or district shall think reasonable and direct."

FORM OF NOTICE.

In the District Court of the United States In and For the ..... District of ....., ... Division.

John Doe,
Plaintiff,
vs.
Richard Roe,
Defendant.

NOTICE OF TAKING DEPOSITIONS.

To Henry Smith, defendant (or plaintiff) or John Jones, his attorney.

Please take notice that on (Monday) the ..... day of ....., 1913, at .... o'clock ....M. the deposition *de bene esse* of Charles Black, of the City of ....., County of ....., and State of ....., will be taken on behalf of the plaintiff (or defendant) herein, before Frank Monroe, who is a commissioner of the District Court of the United States for ..... district of ..... (or a notary public in and for the County of ....., State of ....., or other officer specified in § 863, R. S.) who is not of counsel or attorney to either of the parties, nor interested in the event of the cause, at his office, No. ....., in the City of ....., County of ....., State of .....

The said witness resides at ....., more than 100 miles from the place where the trial of this action will occur, (or is bound on a voyage to sea, or about to go out of the United States, or out of the district where the case is to be tried, and to a greater distance than 100 miles from the place of trial, or is ancient or infirm.)

The examination of said witness will proceed from day to day until completed and will be taken under §§ 863, 864, 865, Revised Statutes of the United States.

Dated, ...

.....,

Attorney for Plaintiff (or Defendant).

§ 508. Compelling Attendance of Witness—Depositions de Bene Esse.

Pt. § 863, R. S., Comp. Stat. 1901, p. 661, 3 F. S. A. 8. "Any person may be compelled to appear and depose as provided by this section, in the same manner as witnesses may be compelled to appear and testify in court."

§ 509. Mode of Taking Depositions de Bene Esse.

§ 864, R. S., Comp. Stat. 1901, p. 663, 3 F. S. A. 15, Rose's Code, § 1762. "Every person deposing as provided in the preceding section shall be cautioned and sworn to testify the whole truth, and carefully examined. His testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under his personal supervision, or by the deponent himself in the officer's presence, and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the deponent."

FORM OF DEPOSITION.

In the District Court of the United States In and For the ..... District of ....., ... Division.

John Doe, Plaintiff, vs. Richard Roe, Defendant.

DEPOSITION OF

.....,

Taken on behalf of Defendant (or Plaintiff).

State of .....
County of .....
District of .....
..... Division } ss.

....., of the city of ..... County of ..... and State of ..... residing more than 100 miles from the place where the trial of this action will occur (as being bound on a voyage to sea, or about to go out of the United States, or out of the district where the case is to be tried, and to a greater distance than 100 miles from the place of trial, or

being ancient or infirm) a witness called on behalf of the plaintiff (or defendant) herein, being duly cautioned and sworn to testify the whole truth, and being carefully examined, deposes and says as follows:

..... Esquire appeared as attorney for plaintiff and ..... Esquire appeared as attorney for defendant. (The testimony on request of either party should be by question and answer otherwise in narrative form.)

Q. 1. State your name and age.

A.

Q. 2. State your residence.

FORM OF OFFICER'S CONCLUDING CERTIFICATE.

In the District Court of the United States In and For the ..... District of ....., ... Division.

John Doe,
Plaintiff,
vs.
Richard Roe,
Defendant.

State of .....
County of .....
District of .....
..... Division } ss.

I hereby certify that on the .... day of ....., ..., before me, ... a commissioner of the United States for the ..... District of ..... (or other official designation) at my office No. ..... in the city of ..... county of ..... State of ..... personally appeared, pursuant to the notice hereto annexed, between the hours of ..... o'clock .... M. and .... o'clock .... M. ....., the witness named in said notice, and ..... Esquire appearing for plaintiff and ..... Esquire appearing for defendant, and the said ..... being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as in the foregoing annexed deposition set out.

I further certify that said deposition was begun on the .... day of ....., ... and continued from day to day until the .... day of ....., ... when same was completed.

I further certify that the several exhibits attached to said deposition, were offered in evidence and marked for identification as is set out in said deposition.

I further certify that the said deposition was then and there reduced to writing (*or* typewriting) by me (*or* under my personal supervision, *or* by the witness in my presence), and was, after it had been reduced to writing (*or* typewriting), subscribed by the witness, and the same has been retained by me for the purpose of sealing up and directing the same to the clerk of the court as required by law.

I further certify that the reason why the said deposition was taken was

that the said witness resides at ..... more than one hundred miles from ..... the place where this cause is to be tried (or other reason, specified § 863, R. S.).

I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

I further certify that the fee for taking said deposition, $.... has been paid to me by the plaintiff (*or* defendant), and the same is just and reasonable.

WITNESS my hand and official seal at ..... this .. day of ....

[Seal]

....., Title.

§ 510. Equity Rule as to Form of Deposition.

Equity Rule 49.[d] "All evidence offered before an examiner or like officer, together with any objections, shall be saved and returned into the court. Depositions, whether upon oral examination before an examiner or like officer or otherwise, shall be taken upon questions and answers reduced to writing, or in the form of narrative, and the witnesses shall be subject to cross and re-examination."

§ 511. Equity Rule as to Objections to Evidence.

Pt. Equity Rule 51.[e] "Objections to the evidence, before an examiner or like officer, shall be in short form, stating the grounds of objection relied upon, but no transcript filed by such officer shall include argument or debate. . . . Objection to any question or questions shall be noted by the officer upon the deposition, but he shall not have power to decide on the competency or materiality or relevancy of the questions. The court shall have power, and it shall be its duty, to deal with the costs of incompetent and immaterial or irrelevant depositions, or parts of them, as may be just."

§ 512. Equity Rule as to Signing Deposition.

Pt. Equity Rule 51.[f] ". . . The testimony of each witness, after being reduced to writing, shall be read over to or by him, and shall be signed by him in the presence of the officer: *Provided,* That if the witness shall refuse to sign his deposition so taken, the officer shall sign the same, stating

[d] See Equity Rule 49, with Annotations, in Appendix, post.
[e] See Equity Rule 51, with Annotations, in Appendix, post.
[f] See Equity Rule 51, with Annotations, in Appendix, post.

upon the record the reasons, if any, assigned by the witness for such refusal. . . ."

§ 513. Delivery into Court of Depositions de Bene Esse.

Pt. § 865, R. S., Comp. Stat. 1901, p. 663, 3 F. S. A. p. 17. "Every deposition taken under the two preceding sections (863–4, R. S.) shall be retained by the magistrate taking it, until he delivers it with his own hand into the court for which it is taken; or it shall, together with a certificate of the reasons as aforesaid of taking it and of the notice, given to the adverse party, be by him sealed up and directed to such court, and remain under his seal until opened in court. . . ."

§ 514. Depositions under a Commission.

§ 866, R. S., Comp. Stat. 1901, p. 663, 3 F. S. A. 20, Rose's Code, § 1765. "(Depositions under a dedimus potestatem and *in perpetuan,* etc.) In any case where it is necessary, in order to prevent a failure or delay of justice, any of the courts of the United States may grant a dedimus potestatem to take depositions according to common usage; and any circuit court, upon application to it as a court of equity, may, according to the usages of chancery, direct depositions to be taken *in perpetuam rei memoriam,* if they relate to any matters that may be cognizable in any court of the United States. And the provisions of sections eight hundred and sixty-three, eight hundred and sixty-four, and eight hundred and sixty-five, shall not apply to any deposition to be taken under the authority of this section."

§ 515. Witnesses Exempt from Attendance—Depositions under a Commission.

§ 870, R. S., Comp. Stat. 1901, p. 665, 3 F. S. A. 24, Rose's Code, § 1769. "No witness shall be required, under the provisions of either of the two preceding sections (§§ 868, 869, R. S.), to attend at any place out of the county where he resides, nor more than forty miles from the place of his residence, to give his deposition; nor shall any witness be deemed guilty of contempt for disobeying any subpœna directed to him by virtue of the said sections, unless his fee for going to, returning from, and one day's attendance at the place of examination, are paid or tendered to him at the time of the service of the subpœna."

§ 516. Compelling Attendance and Testimony of Witnesses for Depositions under Commission.

§ 868, R. S., Comp. Stat. 1901, p. 664, 3 F. S. A. 23, Rose's Code, § 1767. "When a commission is issued by any court of the United States for taking the testimony of a witness named therein at any place within any district or territory, the clerk of any court of the United States for such district or territory shall, on the application of either party to the suit, or of his agent, issue a subpœna for such witness, commanding him to appear and testify before the commissioner named in the commission, at a time and place stated in the subpœna; and if any witness, after being duly served with such subpœna, refuses or neglects to appear, or, after appearing, refuses to testify, not being privileged from giving testimony, and such refusal or neglect is proven to the satisfaction of any judge of the court whose clerk issues such subpœna, such judge may proceed to enforce obedience to the process, or punish the disobedience, as any court of the United States may proceed in case of disobedience to process of subpœna to testify issued by such court."

§ 517. Compelling Production of Papers, Written Instruments, Books, or Documents in Taking Depositions under a Commission.

§ 869, R. S., Comp. Stat. 1901, p. 665, 3 F. S. A. 24 Rose's Code, § 1768. "(Subpœna duces tecum under a dedimus potestatem.) When either party in such suit applies to any judge of a United States court in such district or territory for a subpœna commanding the witness, there to be named, to appear and testify before said commissioner, at the time and place to be stated in the subpœna, and to bring with him and produce to such commissioner any paper or writing or written instrument or book or other document, supposed to be in the possession or power of such witness, and to be described in the subpœna, such judge, on being satisfied by the affidavit of the person applying, or otherwise, that there is reason to believe that such paper, writing, written instrument, book, or other document is in the possession or power of the witness, and that the same, if produced, would be competent and material evidence for the party applying therefor, may order the clerk of said court to issue such subpœna accordingly. And if the witness, after being served with such subpœna, fails to produce to the commissioner at the time and place

stated in the subpœna, any such paper, writing, written instrument, book, or other document, being in his possession or power, and described in the subpœna, and such failure is proved to the satisfaction of said judge, he may proceed to enforce obedience to said process of subpœna, or punish the disobedience in like manner as any court of the United States may proceed in case of disobedience to like process issued by such court. When any such paper, writing, written instrument, book, or other document is produced to such commissioner, he shall, at the cost of the party requiring the same, cause to be made a correct copy thereof, or of so much thereof as shall be required by either of the parties."

§ 518. Depositions to Perpetuate Testimony under State Laws—Admissible in Court's Discretion.

§ *867, R. S., Comp. Stat. 1901, p. 664, 3 F. S. A. 23. Rose's Code,* § *1766.* "Any court of the United States may, in its discretion, admit in evidence in any cause before it any deposition taken *in perpetuam rei memoriam,* which would be so admissible in a court of the state wherein such cause is pending, according to the laws thereof."

§ 519. Depositions May Be Taken in Mode Prescribed by State Law.

Act March 9, 1892, ch. 14, Comp. Stat. 1901, p. 664, 3 F. S. A. 22. "That in addition to the mode of taking the depositions of witnesses in causes pending at law or equity in the district and circuit courts of the United States, it shall be lawful to take the depositions or testimony of witnesses in the mode prescribed by the law of the state in which the courts are held."

§ 520. Depositions in Equity under Court Order before Commissioner, Master, or Examiner.

Equity Rule 52.[x] "Witnesses who live within the district, and whose testimony may be taken out of court by these rules, may be summoned to appear before a commissioner appointed to take testimony, or before a master or examiner appointed in any cause, by subpœna in the usual form, which may be issued by the clerk in blank and filled up by the

[x] See Equity Rule 52, with Annotations, in Appendix, post.

party praying the same, or by the commissioner, master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in court; and if any witness shall refuse to appear or give evidence it shall be deemed a contempt of the court, which being certified to the clerk's office by the commissioner, master, or examiner, an attachment may issue thereupon by order of the court or of any judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in the court.

"In case of refusal of witnesses to attend or be sworn or to answer any question put by the commissioner, master or examiner or by counsel or solicitor, the same practice shall be adopted as is now practiced with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories."

§ 521. Same—Notice.

Equity Rule 53.[h] "Notice shall be given by the respective counsel or parties to the opposite counsel or parties of the time and place of examination before an examiner or like officer for such reasonable time as the court or officer may fix by order in each case."

§ 522. Deposition in Equity Published on Filing.

Equity Rule 55.[i] "Upon the filing of any deposition or affidavit taken under these rules or any statute, it shall be deemed published, unless otherwise ordered by the court."

§ 523. Letters Rogatory or Commissions to Take Depositions of Witnesses in Foreign Countries.

§ 875, R. S., Comp. Stat. 1901, p. 667, 3 F. S. A. 25, Rose's Code, § 1774. "When any commission or letter rogatory, issued to take the testimony of any witness in a foreign country, in any suit in which the United States are parties or have an interest, is executed by the court or the commissioner to whom it is directed, it shall be returned by such court or commissioner to the minister or consul of the United States nearest the place where it is executed. On receiving the same, the said minister or consul shall indorse

[h] See Equity Rule 53, with Annotations, in Appendix, post.
[i] See Equity Rule 55, with Annotations, in Appendix, post.

thereon a certificate, stating when and where the same was received, and that the said deposition is in the same condition as when he received it; and he shall thereupon transmit the said letter or commission, so executed and certified, by mail, to the clerk of the court from which the same issued, in the manner in which his official dispatches are transmitted to the government. And the testimony of witnesses so taken and returned shall be read as evidence on the trial of the suit in which it was taken, without objection as to the method of returning the same. When letters rogatory are addressed from any court of a foreign country to any circuit court of the United States, a commissioner of such circuit court designated by said court to make an examination of the witnesses mentioned in said letters, shall have power to compel the witnesses to appear and depose in the same manner as witnesses may be compelled to appear and testify in courts."

§ 524. Taking Testimony to Be Used in Foreign Countries.

§ 4071, R. S., Comp. Stat. 1901, p. 2763, 3 F. S. A. 41, Rose's Code, § 1750. "The testimony of any witness residing within the United States, to be used in any suit for the recovery of money or property depending in any court in any foreign country with which the United States are at peace, and in which the government of such foreign country shall be a party or shall have an interest, may be obtained, to be used in such suit. If a commission or letters rogatory to take such testimony, together with specific written interrogatories, accompanying the same, and addressed to such witness, shall have been issued from the court in which such suit is pending, on producing the same before the district judge of any district where the witness resides or shall be found, and on due proof being made to such judge that the testimony of any witness is material to the party desiring the same, such judge shall issue a summons to such witness requiring him to appear before the officer or commissioner named in such commission or letters rogatory, to testify in such suit. And no witness shall be compelled to appear or to testify under this section except for the purpose of answering such interrogatories so issued and accompanying such commission or letters: *Provided,* That when counsel for all the parties attend the examination, they may consent that questions in addition to those

accompanying the commission or letters rogatory may be put to the witness, unless the commission or letters rogatory exclude such additional interrogatories The summons shall specify the time and place at which the witness is required to attend, which place shall be within one hundred miles of the place where the witness resides or shall be served with such summons."

§ 525. Same—Witness Need Not Criminate Himself.

§ 4072, R. S., Comp. Stat. 1901, p. 2764, 3 F. S. A. 42, Rose's Code, § 1751. "No witness shall be required, on such examination or any other under letters rogatory, to make any disclosure or discovery which shall tend to criminate him either under the laws of the state or territory within which such examination is had, or any other, or any foreign state."

§ 526. Publicity in Taking Depositions in Anti-trust Cases.

Act March 3, 1913, ch. 114, 37 Stat. at L. 731. "That in the taking of depositions of witnesses for use in any suit in equity brought by the United States under the act entitled 'An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies,' approved July second, eighteen hundred and ninety, and in the hearings before any examiner or special master appointed to take testimony therein, the proceedings shall be open to the public as freely as are trials in open court; and no order excluding the public from attendance on any such proceedings shall be valid or enforceable."

CHAPTER 17.

COSTS AND FEES.

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§ 530. In General. Costs and fees of actions or suits pending or determined in the Federal courts are regulated by the Federal statutes.[1] On removal the costs that have accrued in the state court under state statutes will be taxable in the Federal courts,[2] and the costs provided by state statutes will be taxed in the Federal courts, for statutory proceedings adopted by the Federal courts from the state practice.[3] Where the state statute provides that a nonresident shall give security for costs, the Federal courts will enforce same in a common-law action.[4]

§ 531. Taxable Costs and Fees.

§ *823, R. S., Comp. Stat. 1901, p. 632, 2 F. S. A. 276, Rose's Code,* § *705.* "The following and no other compensation shall be taxed and allowed to attorneys, solicitors, and proctors in the courts of the United States, to district attorneys, clerks of the circuit and district courts, marshals, commissioners, witnesses, jurors, and printers in the several states and territories, except in cases otherwise expressly provided by law. But nothing herein shall be construed to prohibit attorneys, solicitors, and proctors from charging to and receiving from their clients, other than the government, such reasonable compensation for their services, in

[1] Bradford v. Bradford, 2 Flipp. 280, Fed. Cas. No. 1,766; Heckman v. Mackey, 32 Fed. 574; Carlisle v. Cooper, 64 Fed. 475, 12 C. C. A. 235.

[2] Cleaver v. Traders' Ins. Co. 40 Fed. 863; Wolf v. Connecticut, etc. Ins. Co. 1 Flipp. 377, Fed. Cas. No. 17,924. 1 Cent. Law J. 301; Gunther v. Liverpool, etc., Ins. Co. 10 Fed. 830, 20 Blatchf. 390; National Steamship Co. v. Tugman, 67 Fed. 16.

[3] Huntress v. Epsom, 15 Fed. 732; Morrison v. Bernards, Tp. 35 Fed. 400; N. H. L. Co. v. Tilton, 29 Fed. 764.

[4] Henning v. Western Union Tel. Co. 40 Fed. 658. See also Schofield v. Palmer, 134 Fed. 754; Winkley Co. v. Bowen, Mfg. Co. 180 Fed. 624.

addition to the taxable costs, as may be in accordance with general usage in their respective states, or may be agreed upon between the parties."

§ 532. Bill of Costs.

§ *983, R. S., Comp. Stat. 1901, p. 706, 2 F. S. A. 291, Rose's Code,* § *1839.* "The bill of fees of the clerk, marshal, and attorney, and the amount paid printers and witnesses, and lawful fees for exemplifications and copies of papers necessarily obtained for use on trials of cases whereby law costs are recoverable in favor of the prevailing party, shall be taxed by a judge or clerk of the court, and be included in and form a portion of a judgment or decree against the losing party. Such taxed bills shall be filed with the papers in the cause."

§ 533. Same—Must be Verified.

§ *984, R. S., Comp. Stat. 1901, p. 706, 2 F. S. A. 293, Rose's Code,* § *1840.* "Before any bill of costs shall be taxed by any judge or other officer, or allowed by any officer of the Treasury, in favor of clerks, marshals, commissioners, or district attorneys, the party claiming such bill shall prove by his own oath, or that of some other person having knowledge of the facts, to be attached to such bill, and filed therewith, that the services charged therein have been actually and necessarily performed, as therein stated."

§ 534. Costs—Indigent Parties.

Act June 25, 1910, ch. 435, Comp. St. 1911, p. 274, 1912 Supp. F. S. A. v. 1, p. 4, amending § *1, Act July 20, 1892, ch. 209, Comp. St. 1901, p. 706, 2 F. S. A. 294, Rose's Code,* § *1823.* "That any citizen of the United States entitled to commence or defend any suit or action, civil or criminal, in any court of the United States, may, upon the order of the court, commence and prosecute or defend to conclusion any suit or action, or a writ of error, or an appeal to the circuit court of appeals, or to the Supreme Court in such suit or action, including all appellate proceedings, unless the trial court shall certify in writing that in the opinion of the court such appeal or writ of error is not taken in good faith, without being required to prepay fees or costs or for the printing of the record in the appellate court or give security therefor, before or after bring-

ing suit or action, or upon suing out a writ of error or appealing, upon filing in said court a statement under oath in writing that because of his poverty he is unable to pay the costs of said suit or action or of such writ or error or appeal, or to give security for the same, and that he believes that he is entitled to the redress he seeks by such suit or action or writ of error or appeal, and setting forth briefly the nature of his alleged cause of action, or appeal." (36 Stat. at L. 866.)

§ 2, Act July 20, 1892, ch. 209, Comp. Stat. 1901, p. 707, 2 F. S. A. 294, Rose's Code, § 1824. "After any such suit or action shall have been brought, or that is now pending, the plaintiff may answer and avoid a demand for fees or security for costs by filing a like affidavit, and wilful false swearing in any affidavit provided for in this or the previous section, shall be punishable as perjury in other cases."

§ 3, Act July 20, 1892, ch. 209, Comp. Stat. 1901, p. 707, 2 F. S. A. 294, Rose's Code, § 1825. "The officers of such court shall issue, serve all process, and perform all duties in such cases, and witnesses shall attend as in other cases, and the plaintiff shall have the same remedies as are provided by law in other cases."

§ 4, Act July 20, 1892, ch. 209, Comp. Stat. 1901, p. 707, 2 F. S. A. 294, Rose's Code, 1826. "The court may request any attorney of the court to represent such poor person, if it deems the cause worthy of a trial, and may dismiss any such cause so brought under this act if it be made to appear that the allegation of poverty is untrue, or if said court be satisfied that the alleged cause of action is frivolous or malicious. Judgment may be rendered for costs at the conclusion of the suit, as in other cases: *Provided,* That the United States shall not be liable for any of the costs thus incurred."

§ 535. Payment of Costs and Witness Fees for Indigent Defendant in Criminal Cases.

Pt. § 878, R. S., Comp. Stat. 1901, p. 668, 7 F. S. A. 1122, Rose's Code, § 741 (*§ 484, infra*). ". . . In such case the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States."

§ 536. Costs Not Allowed for Recovery Less than $500, Where Amount in Controversy Material or Libelant Recovers Less than $300. By § 291, Judicial Code, the powers and duties of the former circuit courts are conferred on the district courts.

§ 968, R. S., Comp. Stat. 1901, p. 702, 2 F. S. A. 285, Rose's Code, § 1827, confers on the circuit courts authority to impose costs where recovery is less than a specified amount. As this section is not expressly repealed it would seem that when in a district court "a plaintiff in an action at law originally brought there, or a petitioner in equity, other than the United States, recovers less than the sum or value of five hundred dollars, exclusive of costs, in a case that cannot be brought there unless the amount in dispute, exclusive of costs, exceeds said sum or value; or a libelant, upon his own appeal, recovers less than the sum or value of three hundred dollars, exclusive of costs, he shall not be allowed, but at the discretion of the court, may be adjudged to pay costs."

§ 537. Costs Where Cases Can be Consolidated.

§ 921, R. S., Comp. Stat. 1901, p. 685, 4 F. S. A. 587, Rose's Code, § 1833. "When causes of a like nature or relative to the same question are pending before a court of the United States, or of any territory, the court may make such orders and rules concerning proceedings therein as may be conformable to the usages of courts, for avoiding unnecessary costs or delay in the administration of justice."

§ 977, R. S., Comp. Stat. 1901, p. 704, 2 F. S. A. 290, Rose's Code, § 1832. "If several actions or processes are instituted, in a court of the United States or one of the territories, against persons who might legally be joined in one action or process touching the matter in dispute, the party pursuing the same shall not recover, on all of the judgments therein which may be rendered in his favor, the costs of more than one action or process, unless special cause for said several actions or processes is satisfactorily shown on motion in open court."

§ 978, R. S., Comp. Stat. 1901, p. 704, 2 F. S. A. 290, Rose's Code, § 1834. "When proceedings are had before a court of the United States or of the territories, on several

libels against any vessel and cargo, which might legally be joined in one libel, there shall not be allowed thereon more costs than on one libel, unless special cause for libeling the vessel and cargo separately is satisfactorily shown on motion in open court. And in proceedings on several libels or informations against any cargo or parts of cargo, or merchandise seized as forfeited for the same cause, there shall not be allowed more costs than would be lawful on one libel or information, whatever may be the number of owners or consignees therein concerned. But allowance may be made on one libel or information for the costs incidental to several claims."

§ 538. Mode of Recovery of Fees.

§ 857, R. S., Comp. Stat. 1901, p. 658, 4 F. S. A. 127, Rose's Code, § 750. "The fees and compensations of the officers and persons hereinbefore mentioned, except those which are directed to be paid out of the Treasury, shall be recovered in like manner as the fees of the officers of the states respectively for like services are recovered.

§ 539. Fees of Attorneys, Solicitors, Proctors.

§ 824, R. S., Comp. Stat. 1901, p. 632, 4 F. S. A. 90 (also part in 2 F. S. A. 278), Rose's Code, § 716. "On a trial before a jury, in civil or criminal causes or before referees, or on a final hearing in equity or admiralty, a docket fee of twenty dollars: *Provided,* That in cases of admiralty and maritime jurisdiction, where the libelant recovers less than fifty dollars, the docket fee of his proctor shall be but ten dollars.

"In cases at law, when judgment is rendered without a jury, ten dollars.

"In cases at law, when the cause is discontinued, five dollars.

"For scire facias, and other proceedings on recognizances, five dollars.

"For each deposition taken and admitted in evidence in a cause, two dollars and fifty cents.

"For services rendered in cases removed from a district to a circuit court by writ of error or appeal, five dollars.

"For examination of a district attorney, before a judge or commissioner, of persons charged with crime, five dollars a day for the time necessarily employed.

"For each day of his necessary attendance in a court of the United States on the business of the United States, when the court is held at the place of his abode, five dollars; and for his attendance when the court is held elsewhere, five dollars for each day of the term.

"For traveling from the place of his abode to the place of holding any court of the United States in his district, or to the place of any examination before a judge or commissioner, of a person charged with crime, ten cents a mile for going and ten cents a mile for returning.

"When an indictment for crime is tried before a jury and a conviction is had, the district attorney may be allowed, in addition to the attorney's fees herein provided, a counsel fee, in proportion to the importance and difficulty of the cause, not exceeding thirty dollars."

§ 540. Attorney's Liability for Costs Vexatiously Increased.

§ 982, R. S., Comp. Stat. 1901, p. 706, 2 F. S. A. 291, Rose's Code, § 1838. "If any attorney, proctor, or other person admitted to conduct causes in any court of the United States, or of any territory, appears to have multiplied the proceedings in any cause before such court, so as to increase costs unreasonably and vexatiously, he shall be required, by order of the court, to satisfy any excess of costs so increased."

§ 541. Fees—Salary—United States District Attorney.

By § 6, Act May 26, 1896, ch. 252, 29 Stat. at L. 179, Comp. Stat. 1901, p. 611, 4 F. S. A. 133, Rose's Code, § 745, all fees and emoluments authorized by law to be paid United States district attorneys shall be charged as heretofore, and shall be collected as far as possible and paid into the Treasury. The official himself, however, receives a salary, provided in § 7 of the act, Comp. St. 1901, p. 611, 4 F. S. A. 137, Rose's Code, § 510. The District of Columbia does not seem to be included.

The following are some of the provisions: 2 % on all moneys collected or realized in any suit or proceeding arising under the revenue laws. § 825, R. S., Comp. Stat. 1901, p. 634, 4 F. S. A. 93, Rose's Code, § 717.

No fees allowed on a bond left for collection, or on which suit is started, unless the party has neglected to apply for renewal for

more than twenty days after maturity. § 826, R. S., Comp. Stat. 1901, p. 634, 4 F. S. A. 94, Rose's Code, § 718.

Fees for defense of revenue officers do not seem to be a part of taxable costs. This provision would only apply to District of Columbia. § 827, R. S., Comp. Stat. 1901, p. 634, 4 F. S. A. 94, Rose's Code, § 719.

Double fees would seem to be taxable in Oregon and Nevada under § 837, R. S., Comp. Stat. 1901, p. 644, 4 F. S. A. 122, Rose's Code, § 720.

Where two or more indictments, suits, or proceedings should be joined, only one bill of costs allowed. § 980, R. S., Comp. Stat. 1901, p. 705, 4 F. S. A. 127, Rose's Code, § 1836.

§ 542. Clerks' Fees.

§ *828, R. S., Comp. Stat. 1901, p. 635, 4 F. S. A. 95, Rose's Code,* § *706.* "For issuing and entering every process, commission, summons, capias, execution, warrant, attachment, or other writ, except a writ of venire, or a summons or subpœna for a witness, one dollar.

"For issuing a writ of summons or subpœna, twenty-five cents.

"For filing and entering every declaration, plea, or other paper, ten cents.

"For administering an oath or affirmation, except to a juror, ten cents.

"For taking an acknowledgment, twenty-five cents.

"For taking and certifying depositions to file, twenty cents for each folio of one hundred words.

"For a copy of such deposition furnished to a party on request, ten cents a folio.

"For entering any return, rule, order, continuance, judgment, decree, or recognizance, or drawing any bond, or making any record, certificate, return, or report, for each folio, fifteen cents.

"For a copy of any entry or record, or of any paper on file, for each folio, ten cents.

"For making dockets and indexes, issuing venire, taxing costs, and all other services, on the trial or argument of a cause where issue is joined and testimony given, three dollars.

"For making dockets and indexes, taxing costs, and all

other services, in a cause where issue is joined, but no testimony is given, two dollars.

"For making dockets and indexes, taxing costs, and other services, in a cause which is dismissed or discontinued, or where judgment or decree is made or rendered without issue, one dollar.

"For making dockets and taxing costs, in cases removed by writ of error or appeal, one dollar.

"For affixing the seal of the court to any instrument, when required, twenty cents.

"For every search for any particular mortgage, judgment, or other lien, fifteen cents.

"For searching the records of the court for judgments, decrees, or other instruments constituting a general lien on real estate, and certifying the result of such search, fifteen cents for each person against whom such search is required to be made.

"For receiving, keeping, and paying out money, in pursuance of any statute or order of court, one per centum on the amount so received, kept, and paid.

"For traveling from the office of the clerk, where he is required to reside, to the place of holding any court required by law to be held, five cents a mile for going and five cents for returning, and five dollars a day for his attendance on the court while actually in session.

"All books in the offices of the clerks of the circuit and district courts, containing the docket or minute of the judgments, or decrees thereof, shall, during office hours, be open to the inspection of any person to examine the same without any fees or charge therefor."

§ 543. Marshals' Fees.

By § 6, Act May 26, 1896, ch. 252, 29 Stat. at L. 179, Comp. Stat. 1901, p. 611, 4 F. S. A. 133, Rose's Code, § 745, all fees and emoluments authorized by law to be paid United States marshals shall be charged as heretofore, and shall be collected as far as possible and paid into the Treasury. The official himself, however, receives a salary provided in § 9 of the act, Comp. Stat. p. 613, 4 F. S. A. 142, Rose's Code, § 634. The District of Columbia does not seem to be included.

§ 829, R. S., Comp. Stat. 1901, pp. 636–8, 4 F. S. A. 107–8–9, Rose's Code, § 712. "For service of any warrant,

attachment, summons, capias, or other writ, except execution, venire, or a summons, or subpœna for a witness, two dollars for each person on whom service is made.

"For the keeping of personal property attached on mesne process, such compensation as the court, on petition setting forth the facts under oath, may allow.

"For serving venires and summoning every twelve men as grand or petit jurors, four dollars, or thirty-three and one-third cents each. In states where, by the laws thereof, jurors are drawn by lot, by constables, or other offices of corporate places, the marshal shall receive, for each jury, two dollars for the use of the officers employed in drawing and summoning the jurors and returning each venire, and two dollars for his own services in distributing the venires. But the fees for distributing and serving venires, drawing and summoning jurors by township officers, including the mileage chargeable by the marshal for each service, shall not at any court exceed fifty dollars.

"For holding a court of inquiry or other proceedings before a jury, including the summoning of a witness, fifty cents; and no further compensation shall be allowed for any copy, summons, or notice for a witness.

"For serving a writ of possession, partition, execution, or any final process, the same mileage as is allowed for the service of any other writ, and for making the service, seizing or levying on property, advertising and disposing of the same by sale, set off, or otherwise according to law receiving and paying over the money, the same fees and poundage as are or shall be allowed for similar services to the sheriffs of the states, respectively, in which the service is rendered.

"For each bail bond, fifty cents.

"For summoning appraisers, fifty cents each.

"For executing a deed prepared by a party or his attorney, one dollar.

"For drawing and executing a deed, five dollars.

"For copies of writs or papers furnished at the request of any party, ten cents a folio.

"For every proclamation in admiralty, thirty cents.

"For serving an attachment *in rem* or a libel in admiralty, two dollars.

"For the necessary expenses of keeping boats, vessels, or other property attached or libeled in admiralty, not exceeding two dollars and fifty cents a day.

"When the debt or claim in admiralty is settled by the

parties without a sale of the property, the marshal shall be entitled to a commission of one per centum on the first five hundred dollars of the claim or decree, and one-half of one per centum on the excess of any sum thereof over five hundred dollars: *Provided,* That, when the value of the property is less than the claim, such commission shall be allowed only on the appraised value thereof.

"For sale of vessels or other property under process in admiralty, or under the order of a court of admiralty, and for receiving and paying over the money, two and one-half per centum on any sum under five hundred dollars, and one and one-quarter per centum on the excess of any sum over five hundred dollars.

"For disbursing money to jurors and witnesses, and for other expenses, two per centum.

"For expenses while employed in endeavoring to arrest, under process, any person charged with or convicted of a crime, the sum actually expended, not to exceed two dollars a day, in addition to his compensation for service and travel.

"For every commitment or discharge of a prisoner, fifty cents.

"For transporting criminals, ten cents a mile for himself and for each prisoner and necessary guard; except in the case provided for in the next paragraph.

"For transporting criminals convicted of a crime in any district or territory where there is no penitentiary available for the confinement of convicts of the United States, to a prison in another district or territory designated by the Attorney General, the reasonable actual expense of transportation of the criminals, the marshal, and the guards, and the necessary subsistence and hire.

"For attending the circuit and district courts, when both are in session, or either of them when only one is in session, and for bringing in and committing prisoners and witnesses during the term, five dollars a day.

"For attending examinations before a commissioner, and bringing in, guarding, and returning prisoners charged with crime, and witnesses, two dollars a day; and for each deputy not exceeding two, necessarily attending, two dollars a day.

"For traveling from his residence to the place of holding court, to attend a term thereof, ten cents a mile for going only.

"For travel, in going only, to serve any process, warrant, attachment, or other writ, including writs of subpœna in

civil or criminal cases, six cents a mile, to be computed from the place where the process is returned to the place of service, or, when more than one person is served therewith, to the place of service which is most remote, adding thereto the extra travel which is necessary to serve it on others. But when more than two writs of any kind required to be served in behalf of the same party on the same person might be served at the same time, the marshal shall be entitled to compensation for travel on only two of such writs; and to save unnecessary expense, it shall be the duty of the clerk to insert the names of as many witnesses in a cause in such subpœna as convenience in serving the same will permit.

"In all cases where mileage is allowed to the marshal he may elect to receive the same or his actual traveling expenses, to be proved on his oath, to the satisfaction of the court."

§ 544. Attorneys, Clerks, and Marshals' Fees under Civil Rights Laws.

Pt. § 1986, R. S., Comp. Stat. 1901, p. 1265, 1 F. S. A. 799, Rose's Code, § 722. "The district attorneys, marshals, and their deputies, and the clerks of the courts of the United States and territorial courts, shall be paid for their services, in cases under the foregoing provisions, the same fees as are allowed to them in like cases, and when the proceedings are before a commissioner he shall be entitled to a fee of ten dollars for his services in each case, inclusive of all services incident to the arrest and examination."

§ 545. Fees of United States Commissioners.

Pt. § 21, Act May 28, 1896, ch. 252, 29 Stat. at L. 184, Comp. Stat. 1901, pp. 652, 653, 4 F. S. A. 146–7, Rose's Code, § 723. "That each United States commissioner shall be entitled to the following named fees, and none other:

"Drawing a complaint, with oath and jurat to same, fifty cents.

"Copy of complaint, with certificate to same, thirty cents.

"Issuing warrant of arrest, seventy-five cents.

"Issuing a commitment and making copy of same, one dollar.

"Entering a return, fifteen cents.

"Issuing subpœna or subpœnas in any one case, with five cents for each necessary witness in addition to the first, twenty-five cents.

"Drawing a bond of defendant and sureties, taking acknowledgment of same and justification of sureties, seventy-five cents.

"For administering an oath (except to witness as to attendance and travel), ten cents.

"Recognizance of all witnesses in a case, when the defendant or defendants are held for court, fifty cents.

"Transcripts of proceedings, when required by order of court and transmission of original papers to court, sixty cents.

"Copy of warrant of arrest, with certificate to same, when defendant is held for court, and the original papers are not sent to court, forty cents.

"Order in duplicate to pay all witnesses in a case: For first witness, thirty cents, and for each additional witness, five cents, and for oath to each witness as to attendance and travel, five cents.

"For hearing and deciding on criminal charges and reducing the testimony to writing when required by law or order of court, five dollars a day for the time necessarily employed.

"*Provided,* That not more than one *per diem* shall be allowed in a case, unless the account shall show that the hearing could not be completed in one day, when one additional *per diem* may be especially approved and allowed by the court.

"*Provided, further,* That not more than one *per diem* shall be allowed for any one day.

"*Provided, further,* That no *per diem* shall be allowed for taking a bond or recognizance and passing on the sufficiency of the bond or recognizance and the sureties thereon when the bond or recognizance was taken after the defendant had been committed to prison upon a final commitment, or has given bond or been recognized for his appearance at court, or when the defendant has been arrested on a capias or bench warrant, or was in custody under any process or order of a court of record.

"For the examination and certificate in cases of application for discharge of poor convicts imprisoned for nonpayment of fine or fine and costs, and all services connected therewith, three dollars.

"For attending to a reference in a litigated matter, in a civil cause at law, in equity, or in admiralty, in pursuance of an order of the court, three dollars a day.

"For taking and certifying depositions to file in civil cases, ten cents for each folio.

"For each copy of the same furnished to a party on request, ten cents for each folio.

"For issuing any warrant under the tenth article of the treaty of August 9, 1842, between the United States and the Queen of the United Kingdom of Great Britain and Ireland, against any parties charged with any crime or offense set forth in said article, two dollars.

"For issuing any warrant under the provision of the convention for the surrender of criminals between the United States and the King of the French, concluded at Washington, November 9, 1843, two dollars.

"For hearing and deciding upon the case of any person charged with any crime or offense, and arrested under the provisions of said treaty or of said convention, five dollars a day for the time necessarily employed . . ."

§ 546. Same—Under Chinese Exclusion Laws.

§ 2, Act March 3, 1901, ch. 845, 31 Stat. at L. 1093, Comp. Stat. 1901, p. 1328, 1 F. S. A. 759, Rose's Code, § 724. "A United States Commissioner shall be entitled to receive a fee of five dollars for hearing and deciding a case arising under the Chinese Exclusion laws." (31 Stat. at L. 1093.)

§ 547. Costs and Witness Fees in Extradition Cases.

§ 4, Act Aug. 3, 1882, ch. 378, Comp. Stat. 1901, p. 3595, 3 F. S. A. 89, Rose's Code, § 742. "That all witness fees and costs of every nature in cases of extradition, including the fees of the commissioner, shall be certified by the judge or commissioner before whom the hearing shall take place to the Secretary of State of the United States, who is hereby authorized to allow the payment thereof out of the appropriation to defray the expenses of the judiciary; and the Secretary of State shall cause the amount of said fees and costs so allowed to be reimbursed to the government of the United States by the foreign government by whom the proceedings for extradition may have been instituted." (22 Stat. at L. 216.)

§ 548. Witnesses' Fees.

§ 848, R. S., Comp. Stat. 1901, p. 654, 7 F. S. A. 1124, Rose's Code, § 725. "For each day's attendance in court,

or before any officer pursuant to law, one dollar and fifty cents, and five cents a mile for going from his place of residence to the place of trial or hearing, and five cents a mile for returning. When a witness is subpœnaed in more than one cause between the same parties, at the same court, only one travel fee and one *per diem* compensation shall be allowed for attendance. Both shall be taxed in the case first disposed of, after which the *per diem* attendance fee alone shall be taxed in the other cases in the order in which they are disposed of.

"When a witness is detained in prison for want of security for his appearance, he shall be entitled, in addition to his subsistence, to a compensation of one dollar a day."

In Wyoming, Montana, Washington, Oregon, California, Nevada, Idaho, Colorado, New Mexico, Arizona, and Utah the mileage is 15 cents over stage, 5 cents over railroad. (Act Aug. 3, 1892, ch. 361, 27 Stat. at L. 347, Comp. Stat. 1901, p. 655, 7 F. S. A. 1127, Rose's Code, § 734.)

Witness fees in extradition cases are set out, § 547, supra.

Witnesses before the Interstate Commerce Commission are entitled to the same fees and mileage as are paid to witnesses in the Federal courts. (Pt. § 18, Act Feb. 4, 1887, ch. 104, 24 Stat. at L. 386, Comp. Stat. 1901, p. 3168, 3 F. S. A. 849, Rose's Code, § 726.)

Other matters relating to witness fees are in the following sections:

§ 549. Court Officer Not Entitled to Witness Fees.

§ *849, R. S., Comp. Stat. 1901, p. 655, 7 F. S. A. 1127, Rose's Code,* § *729.* "No officer of the United States courts, in any state or territory, or in the District of Columbia, shall be entitled to witness fees for attending before any court or commissioner where he is officiating."

§ 550. Witness Fees Depositions in District of Columbia.

§ *874, R. S., Comp. Stat. 1901, p. 666, 3 F. S. A. 25, Rose's Code,* § *727.* "Every witness appearing and testifying under the said provisions relating to the District of Columbia shall be entitled to receive for each day's attendance,

from the party at whose instance he is summoned, the fees now provided by law for each day he shall give attendance."

§ 551. Same—Under Letters Rogatory from a Foreign Country.

§ *4074, R. S., Comp. Stat. 1901, p. 2764, 3 F. S. A. 42, also 7 F. S. A. 1126, Rose's Code, § 728.* "Every witness who shall so appear and testify shall be allowed, and shall receive from the party at whose instance he shall have been summoned, the same fees and mileage as are allowed to witnesses in suits depending in the district courts of the United States."

§ 552. Witness Fees of Seaman Sent Home to Give Testimony in Criminal Cases.

§ *851, R. S., Comp. Stat. 1901, p. 655, 7 F. S. A. 1128, Rose's Code, § 731.* "There shall be paid to each seaman or other person who is sent to the United States from any foreign port, station, sea, or ocean, by any United States minister, *chargé d'affaires,* consul, captain, or commander, to give testimony in any criminal case depending in any court of the United States, such compensation, exclusive of subsistence and transportation, as such court may adjudge to be proper, not exceeding one dollar for each day necessarily employed in such voyage, and in arriving at the place of examination or trial. In fixing such compensation, the court shall take into consideration the condition of said seaman or witness, and whether his voyage has been broken up, to his injury, by his being sent to the United States. When such seaman or person is transported in an armed vessel of the United States, no charge for subsistence or transportation shall be allowed. When he is transported in any other vessel, the compensation for his transportation and subsistence, not exceeding in any case fifty cents a day, may be fixed by the court, and shall be paid to the captain of said vessel accordingly."

§ 553. United States Liable for Only Four Witness Fees on Preliminary Criminal Examination.

§ *981, R. S., Comp. Stat. 1901, p. 705, 2 F. S. A. 291, Rose's Code, 1837.* "In no case shall the fees of more than four witnesses be taxed against the United States, in the

examination of any criminal case before a commissioner of a circuit court, unless their materiality and importance are first approved and certified to by the district attorney for the district in which the examination is had; and such taxation shall be subject to revision as in other cases."

§ 554. Witness Fees in Prize Cases—How Paid.

§ *4651, R. S., Comp. Stat. 1901, p. 3139, 6 F. S. A. 85, Rose's Code, § 743.* "Whenever the court shall allow fees to any witness in a prize cause, or fees for taking evidence out of the district in which the court sits, and there is no money subject to its order in the cause, the same shall be paid by the marshal, and shall be repaid to him from any money deposited to the order of the court in the cause; and any amount not so repaid the marshal shall be allowed as witness fees paid by him in cases in which the United States is a party."

See also § 556, infra, as to mode of payment of witness and juror fees.

§ 555. Juror Fees—Grand and Petit.

§ *852, R. S.; Comp. Stat. 1901, p. 656, 4 F. S. A. 749, Rose's Code, § 732, made operative by Act June 21, 1902, ch. 1138, 32 Stat. at L. 396, Comp. Stat. 1901, p. 271, 4 F. S. A. 751, Rose's Code, § 733.* "For actual attendance at any court or courts, and for the time necessarily occupied in going to and returning from the same, three dollars a day during such attendance. For the distance necessarily traveled from their residence in going to and returning from said court by the shortest practicable route, five cents a mile."

In Wyoming, Montana, Washington, Oregon, California, Nevada, Idaho, Colorado, New Mexico, Arizona, and Utah the mileage is 15 cents over stage, 5 cents over railroad, but no double mileage for serving both as a witness and juror. Act Aug. 3, 1892, ch. 361, 27 Stat. at L. 347, Comp. Stat. 1901, p. 655, 7 F. S. A. 1127, Rose's Code, § 734.

§ 556. Mode of Payment Juror and Witness Fees.

§ *855, R. S., Comp. Stat. 1901, p. 657, 4 F. S. A. 127,*

Rose's Code, § 738. "In cases where the United States are parties, the marshal shall, on the order of the court, to be entered on its minutes, pay to the jurors and witnesses all fees to which they appear by such order to be entitled, which sum shall be allowed him at the Treasury in his accounts."

§ 557. Printer's Fees.

§ 853, R. S., Comp. Stat. 1901, p. 656, 2 F. S. A. 285, Rose's Code, § 735. "For publishing any notice or order required by law, or the lawful order of any court, department, bureau, or other person, in any newspaper, except as mentioned in sections thirty-eight hundred and twenty-five, Title, "Public Printing, Advertisements, and Public Documents," forty cents per folio for the first insertion, and twenty cents per folio for each subsequent insertion. The compensation herein provided shall include the furnishing of lawful evidence, under oath, of publication, to be made and furnished by the printer or publisher making such publication."

§ 558. Same—Folio Defined.

§ 854, R. S., Comp. Stat. 1901, p. 657, 2 F. S. A. 285, Rose's Code, § 736. "The term 'folio' in this chapter shall mean one hundred words, counting each figure as a word. When there are over fifty and under one hundred words, they shall be counted as one folio; but a less number than fifty words shall not be counted, except when the whole statute, notice, or order contains less than fifty words."

§ 559. Appraiser's Fees on Execution Sales.

Last Pt. § 993, R. S., Comp. Stat. 1901, p. 710, 3 F. S. A. 52, Rose's Code, § 737. ". . . When such appraisers attend they shall be entitled to the like fees as in cases of appraisement under the laws of the state."

§ 560. No Costs against United States in Internal Revenue Suits upon Information.

§ 969, R. S., Comp. Stat. 1901, p. 702, 2 F. S. A 287, Rose's Code, § 1415. "When a suit for the recovery of any penalty or forfeiture accruing under any law providing internal revenue is brought upon information received from any person other than a collector, deputy collector, or in-

spector of internal revenue, the United States shall not be subject to any costs of suit."

§ 561. No Costs against Prosecutor nor for Claimant When Reasonable Cause for Seizure.

§ 970, R. S., Comp. Stat. 1901, p. 702, 2 F. S. A. 287, Rose's Code, § 1520. "(Claimant not entitled to costs when reasonable cause of seizure.) When, in any prosecution commenced on account of the seizure of any vessel, goods, wares, or merchandise, made by any collector or other officer, under any act of Congress authorizing such seizure, judgment is rendered for the claimant, but it appears to the court that there was reasonable cause of seizure, the court shall cause a proper certificate thereof to be entered, and the claimant shall not, in such case, be entitled to costs, nor shall the person who made the seizure, nor the prosecutor, be liable to suit or judgment on account of such suit or prosecution: *Provided,* That the vessel, goods, wares, or merchandise be, after judgment, forthwith returned to such claimant or his agent."

§ 562. Successful Claimant Entitled to Possession When His Own Costs Paid.

§ 979, R. S., Comp. Stat. 1901, p. 705, 2 F. S. A. 291, Rose's Code, § 1835. "When judgment is rendered in favor of the claimant of any vessel or other property seized on behalf of the United States, and libeled or informed against as forfeited under any law thereof, he shall be entitled to possession of the same when his own costs are paid."

§ 563. Double Costs against Nonsuited Plaintiff in Action against Revenue Officer.

§ 971, R. S., Comp. Stat. 1901, p. 703, 2 F. S. A. 288, Rose's Code, § 1521. "If, in any suit against an officer or other person executing or aiding or assisting in the seizure of goods, under any act providing for or regulating the collection of duties on imports or tonnage, the plaintiff is nonsuited, or judgment passed against him, the defendant shall recover double costs."

§ 564. Defendant Subjected to Fine, Forfeiture, or Conviction shall Pay Costs of Prosecution.

§ 974, R. S., Comp. Stat. 1901, p. 703, 2 F. S. A. 289,

Rose's Code, § 1416. "(When costs of prosecution to be paid by defendant.) When judgment is rendered against the defendant in a prosecution for any fine or forfeiture incurred under a statute of the United States, he shall be subject to the payment of costs; and on every conviction for any other offense not capital, the court may, in its discretion, award that the defendant shall pay the costs of the prosecution."

§ 565. Defendant to be Awarded Costs if Informer on Penal Statute Nonsuited or Discontinues.

§ 975, R. S., Comp. Stat. 1901, p. 703, 2 F. S. A. 289, Rose's Code, § 1830. "If any informer or plaintiff on a penal statute, to whom the penalty or any part thereof, if recovered, is directed to accrue, discontinues his suit or prosecution or is nonsuited therein, or if, upon trial, judgment is rendered in favor of the defendant, the court shall award the defendant his costs, unless such informer or plaintiff is an officer of the United States specially authorized to commence such prosecution, and the court, at the trial in open court, certifies upon the record that there was a reasonable cause for commencing the same; in which case no costs shall be adjudged to the defendant."

§ 566. Informer on Penal Statute to Pay Costs if Nonsuit or Discontinuance.

§ 976, R. S., Comp. Stat. 1901, p. 704, 2 F. S. A. 290, Rose's Code, § 1831. "If any informer on a penal statute, to whom the penalty, or any part thereof, if recovered, is directed to accrue, discontinues his suit or prosecution, or is nonsuited therein, or if upon trial judgment is rendered in favor of the defendant, such informer shall be alone liable to the clerk, marshal, and attorney for the fees of such prosecution, unless he is an officer of the United States whose duty it is to commence such prosecution, and the court certifies that there was reasonable cause for commencing the same; in which case the United States shall be responsible for such fees."

§ 567. Costs in Copyright Suits.

§ 972, R. S., Comp. Stat. 1901, p. 703, 2 F. S. A. 288, Rose's Code, § 1828. "In all recoveries under the copyright laws, either for damages, forfeitures, or penalties, full costs shall be allowed therein."

§ *40, Act Mch. 4, 1909, ch. 320, Comp. St. 1911, p. 1484, 1909 Supp. F. S. A. 91.* "That in all actions, suits, or proceedings under this act, except when brought by or against the United States or any officer thereof, full costs shall be allowed, and the court may award the prevailing party a reasonable attorneys' fee as part of the costs." (35 Stat. at L. 1084.)

§ 568. Costs on Infringement of Patent.

§ *973, R. S., Comp. Stat. 1901, p. 703, 2 F. S. A. 289, Rose's Code,* § *1829.* "When judgment or decree is rendered for the plaintiff or complainant, in any suit at law or in equity, for the infringement of a part of a patent, in which it appears that the patentee, in his specification, claimed to be the original and first inventor or discoverer of any material part of the thing patented, of which he was not the original and first inventor, no costs shall be recovered, unless the proper disclaimer, as provided by the patent laws, has been entered at the Patent Office before the suit was brought."

§ *4922, R. S., Comp. Stat. 1901, p. 3396, 5 F. S. A. 598, Rose's Code,* § *1174.* "Whenever, through inadvertence, accident, or mistake, and without any wilful default or intent to defraud or mislead the public, a patentee has, in his specification, claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the original and first inventor or discoverer, every such patentee, his executors, administrators, and assigns, whether of the whole or any sectional interest in the patent, may maintain a suit at law or in equity, for the infringement of any part thereof, which was bona fide his own, if it is a material and substantial part of the thing patented, and definitely distinguishable from the parts claimed without right, notwithstanding the specifications may embrace more than that of which the patentee was the first inventor or discoverer. But in every such case in which a judgment or decree shall be rendered for the plaintiff no costs shall be recovered unless the proper disclaimer has been entered at the Patent Office before the commencement of the suit. But no patentee shall be entitled to the benefits of this section if he has unreasonably neglected or delayed to enter a disclaimer."

CHAPTER 18.

AN ACTION AT LAW—SUMMARY.

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§ 580. In General.

§ *914, R. S., Comp. Stat. 1901, p. 684, 4 F. S. A. 563, Rose's Code,* § *900.* "The practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the district courts, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the state within which such . . . . . district courts are held, any rule of court to the contrary notwithstanding."

§ *918, R. S., Comp. Stat. 1901, p. 685, 4 F. S. A. 585, Rose's Code,* § *805.* "The several . . . district courts may, from time to time, and in any manner not inconsistent with any law of the United States, or with any rule prescribed by the Supreme Court under the preceding section, make rules and orders directing the returning of writs and processes, the filing of pleadings, the taking of rules, the entering and making up of judgments by default, and

other matters in vacation, and otherwise regulate their own practice as may be necessary or convenient for the advancement of justice and the prevention of delays in proceedings."

Under the foregoing provisions, an action at law conforms in many particulars to a similar action in the state courts of record of the state wherein the Federal district is located. But there are a number of Federal statutes that exist governing matters of procedure which prevent a complete uniformity with the practice in the several states. There are other matters concerning which the Federal judges, in the exercise of their discretion, have refused to follow the state rules or laws.

The object of this chapter is to summarize the conduct of an action at law with reference to conformity with state laws.

§ 581. Initial Pleading.[1] The initial pleading conforms as to form and sufficiency except that it is necessary to show (1) ground of Federal jurisdiction, (2) ground of legal jurisdiction, that the causes of action are legal as distinguished from equitable, and legal and equitable causes are not permitted to be joined in the same petition, (3) the requisite amount in controversy, and (4) that venue is properly laid. (See §§ 600, 604, infra.)

As to *parties* under subdivision first, § 24, Judicial Code, assignees may not sue except when the assignor or assignors could have sued in the Federal court. (See § 195, infra.)

Joinder of parties is governed by § 50, Judicial Code. Survival of right of action in the executor or administrator is governed by § 55, Judicial Code. In other respects rules of state courts as to parties will govern as in case of suits by assignees, assigning causes of action for torts, executors and administrators, misjoinder of plaintiffs or defendants and right of action for death.

§ 582. Attachment and Garnishment.[2] The remedies of attachment and garnishment are given in conformity to state laws under § 915, R. S., except as against national banks under § 5242, R. S. (See § 610, infra.)

[1] Ch. 19, post. [2] Ch. 20, post.

It is presumed that the Federal courts have adopted the state laws on this subject, and they follow the state courts' construction of state attachment statutes. (See § 612, infra.)

But attachment cannot be made a basis of jurisdiction so as to authorize service by publication. The Federal courts do not follow state practice in jurisdictional matters. (See § 613, infra.)

The state statutes are followed as to causes of action in which attachments will issue, the property subject to attachment, the grounds for attachment to be stated in the affidavit, the bonds given to obtain or release, the form of writ, the effect of lien, priorities, third-party claims, and under § 923, R. S., the dissolution of the attachment. (See § 624, infra.)

But state laws are not followed as to amendments of the affidavit or the writ, amendments being governed by § 948, R. S., for amending process. (See § 617, infra.)

In like manner, state laws are followed in garnishment proceedings under § 915, R. S., relating to attachments and § 916, R. S., relating to executions, but not as to amendments under § 948, R. S., relating to amendment process and § 954, R. S., relating to amendments generally.

There are special provisions as to attachments in postal suits and garnishments in suits by the government against corporations.

§ 583. Process.[3] The time when suit begins follows state law; so also the state statute of limitations. (§ 651, infra.)

The form and body of process follows the state practice, but the signature, seal and test are governed by §§ 911, 912, R. S., and amendment of, by §§ 948, 954, R. S., and the sufficiency of process and service are governed by Federal decisions. (§§ 652–3, infra.)

The marshal or his deputy serve the process as required by §§ 787, 788, R. S. But the method of personal service follows state practice, although substituted service is governed by § 57, Judicial Code.

The Federal decisions govern special appearance. (§§ 654–5–6, infra.)

[3] Ch. 21, post.

§ 262, Judicial Code, allows other writs not provided by statute.

§ 584. Defensive Pleading.[4] The time and order of pleading follow state practice. Defaults may conform to state law under § 918, R. S. (§ 672, infra.) So do also the sufficiency and scope of the pleading. Pleas in abatement, demurrers, answers, set-offs, or counterclaims and replications, when provided by state practice, will be used in like cases in the Federal courts. State rules as to verification are followed. (§§ 671, 3, 4, infra.)

But equitable defenses, equitable offsets or counterclaims, the right of subrogation, etc., are not allowed in law actions except equitable estoppel. (§ 675, infra.)

§ 585. Amendment. Amendment of pleading is covered by § 954, R. S. (§ 676, infra.)

Amendment of process by the same section and also § 948, R. S. (§ 653, infra.)

§ 586. Continuances and Adjournments.[5] Continuances conform to state practice except as modified by §§ 955 and 956, R. S., on the death of a party; § 957, R. S., in suits against a delinquent for public money; § 958, R. S., in postal suits; § 959, R. S., suits on debentures; and § 960, R. S., suits under tariff laws. (§§ 691–696, infra.) There are also provisions for adjournments when the judge is unable to act, § 12, Judicial Code, or his office becomes vacant, under § 22, Judicial Code, and for concluding in a new term trials already commenced, under § 8, Judicial Code. (§§ 63, 64, 65, infra.)

§ 587. Consolidation. Consolidation of suits under § 921, R. S., conforms to state practice. § 920, R. S., provides for consolidation for revenue seizure case. (§ 710, infra.)

§ 588. Trial by Jury.[6] The right of trial by jury is guaranteed by the 7th Amendment of the United States Constitution, and

[4] Ch. 22, post. [5] Ch. 23, post. [6] Ch. 25, post.

is provided for by § 566, R. S. Ch. 12, Judicial Code, as to juries, sets out the provisions governing the qualifications and exemptions of jurors, the matters of impaneling, venire, talesmen, special jury, challenges, etc. The conduct of a jury trial, being a matter of personal administration of the judge, does not conform to state laws. Thus, there is not a conformity with respect to the scintilla of evidence rule, nor with respect to withdrawing case from the jury or permitting the jury to separate or submitting special issues or waiving jury.

§ 589. Trial by Judge.[7] By § 291, Judicial Code, the powers and duties of circuit courts are imposed upon district courts, and hence under §§ 649 and 700, R. S., the district judge would have authority to try questions of fact on waiver of jury. The admission and exclusion of evidence can only be considered when excepted to at the time and duly presented by bill of exceptions under § 700, R. S. The findings of fact by the judge are equivalent to verdict by the jury under §§ 649, 700, 1011, R. S.

§ 590. Depositions, Evidence, Witnesses. The causes for taking depositions are set out in §§ 863 and 866, R. S., and the methods of taking same are provided for in §§ 863 to 870, R. S., inclusive, but may be in the same manner though not for the same cause as provided in the state practice, under act March 9, 1892, ch. 14. The subject of depositions is treated in chapter 16.

There are many statutory provisions relating to special matters of evidence, permitting copies of documents of departments, the record and exemplification of books kept by public officers of a state or territory, copies of foreign records, evidence of acts of state legislatures, and records of judicial proceedings. This subject is treated in chapter 14.

The competence of witnesses conforms under § 858, R. S. State laws are followed as to credibility. The examination and cross-examination of witnesses conform to state practice under § 861, R. S., but not as to the examination of a *party* before trial. See § 724, R. S., our § 711, post.

[7] § 744, infra.

Subpœnas for witnesses are, under §§ 876 and 877, R. S., and in contested patent cases under § 4906, R. S., and their attendance is enforced under § 268, Judicial Code; so, also, the answers of witnesses may be enforced under § 268, Judicial Code, and in contested patent cases under § 4908, R. S. The production of books is provided for in § 724, R. S., and subpœna duces tecum under §§ 724 and 869, R. S. The materiality of evidence and the effect of withdrawing erroneously admitted evidence are governed by Federal decisions. The subject of witnesses is treated in detail, chapter 15, above.

§ 591. Charge to Jury and Verdict. The charge to the jury is also a matter of personal administration of the judge, and is governed by the Federal decisions. Thus state laws forbidding comments on evidence are not followed. § 918, R. S., governs the giving of special charges. Exceptions to charges are governed by circuit courts of appeal rules 10 and supreme court rule 4. (§ 766, post.) The form and effect of a verdict and a judgment *non obstante veredicto* conform to state practice, but the directing of a verdict is governed by the Federal decisions. (§ 763, infra.)

§ 592. Judgment and New Trial.[8] Judgments in law actions may conform by general rule to state laws under § 914, R. S., as to allowance of interest by § 966, R. S.,[9] recording, docketing, and indexing under the act of August 1, 1888, chapter 729.[10] The manner, effect, and extent of the lien or judgments conform under the last-mentioned act, and when they cease to be liens under § 967, R. S.,[11] and the lien is preserved on change of boundaries by § 60, Judicial Code.[12] Judgments by default are authorized by § 918, R. S.[13] Amendment of judgments is governed by § 954, R. S.,[14] and vacation of judgments is governed by Federal decisions.[15] New trials are governed by § 269, Judicial Code.[16]

§ 593. Execution.[17] Executions on judgments in law actions may conform by general rule to state statutes under § 916, R. S.,[18]

[8] Ch. 27, post. [9] § 783, post. [10] §§ 785, 6, 7, post. [11] § 787, post.
[12] § 788, post. [13] § 672, post. [14] § 789, post. [15] § 790, post.
[16] § 764, post. [17] § 781, post. [18] § 791, post.

but do not run against revenue officers for moneys paid on probable cause into the Treasury, under § 989, R. S.[19]

Stay of execution pending motion for new trial is governed by § 987, R. S.,[20] and there is partial conformity to state law under § 988, R. S.,[21] allowing a stay for one term.

Executions run to any part of the state under § 985, R. S., and on judgments in favor of the United States to any part of the United States, under § 986, R. S.[22]

Place of sale of real and personal property is governed by §§ 1 and 2, act March 3, 1893, chapter 225.[23]

Publication of notice of sale of real estate by § 3[24] of the same act and proceedings are not interrupted by vacancy in the marshal's office, under § 994, R. S.[25] The government may be a purchaser in its own suits under § 3470, R. S.[26]

Appraisal of personal property sold on execution may conform to state laws under § 993, R. S.[27]

State laws may be followed regarding abolishment of imprisonment for debt under § 990, R. S.,[28] and for the discharge of a person from arrest or imprisonment in civil cases under § 991, R. S.[29] In government cases a poor debtor may be discharged from imprisonment by the Secretary of the Treasury under § 3471, R. S.,[30] or by the President under § 3472, R. S.[31]

[19] § 792, post. [20] § 793, post. [21] § 794, post. [22] § 795, post.
[23] § 800, post. [24] § 801, post. [25] § 802, post. [26] § 803, post.
[27] § 804, post. [28] § 796, post. [29] § 797, post. [30] § 798, post.
[31] § 799, post.

CHAPTER 19.

THE INITIAL PLEADING—LAW ACTIONS.

Sec.

600. Differences between Federal and State Initial Pleadings.
601. Effect of Failure to Show Jurisdictional Grounds.
602. Effect of Erroneously Beginning as a Suit in Equity.
603. Legal and Equitable Causes of Action May Not Be Joined.
604. Form of Initial Pleading.

§ 600. Differences between Federal and State Initial Pleadings. Under § 914, R. S., Comp. St. 1901, p. 684, 4 F. S. A. 563, the initial pleading in actions at law as distinguished from suits in equity conforms "as near as may be" to the pleadings and forms existing at the time in like causes in the courts of record of the state within which the Federal courts are held.

Because, however, of the limited jurisdiction of the Federal courts and the distinction that exists in such courts between law and equity cases in respect to practice, pleading, forms and mode of proceeding, it is necessary for the initial pleading in an action at law in the Federal court to disclose, in addition to those matters required to make a good pleading in the state court of record of the state within which the Federal court is held: (1) Some ground of Federal jurisdiction, (2) the proper amount in controversy (3) facts showing that the cause of action is legal in its nature as distinguished from equitable, (4) proper venue under Federal laws.

In other respects the initial pleading, a petition, declaration, or complaint, in an action at law in the Federal court, is governed by the state statutes and rules in like causes in the courts of record of the state in which the Federal court is located.[1] There should

[1] Beers v. Haughton, 9 Pet. 359, 9 L. ed. 155; Ex parte Boyd, 105 U. S. 647, 26 L. ed. 1200; Indianapolis, etc., R. Co. v. Horst, 93 U. S. 300, 23 L. ed. 901; United States Bank v. Halstead, 10 Wheat. 51, 6 L. ed. 264;

also be consulted the Federal district court rules of the district in which the action is brought as to the details of methods of doing business of these courts under the authority of § 918, R. S., U. S., Comp. St. 1901, p. 685, 4 F. S. A. 585, giving power to regulate by rules their own practice.[2]

§ 601. Effect of Failure to Show Jurisdictional Grounds.

§ 37, Judicial Code,[a] *36 Stat. at L. 1098, Comp. St. 1911, p. 146, 1912 Supp. F. S. A. v. 1, p. 158.* "If in any suit commenced in a district court, or removed from a state court to a district court of the United States, it shall appear to the satisfaction of the said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said district court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require and shall make such order as to costs as shall be just."

§ 602. Effect of Erroneously Beginning as a Suit in Equity.

Equity Rule 22.[b] "If at any time it appear that a suit commenced in equity should have been brought as an action on the law side of the court, it shall be forthwith transferred to the law side and be there proceeded with, with only such alteration in the pleadings as shall be essential."

§ 603. Legal and Equitable Causes of Action May Not Be Joined. The fact that a state statute abolishes the forms of action has no effect on the forms of pleading in equity suits in the Federal courts in that state, nor does such statute in fact change or destroy the essential distinctions that exist between

Parsons v. Bedford, 3 Pet. 448, 7 L. ed. 737; Matter of Freeman, 2 Curt. 491, Fed. Cas. No. 5,083; United States v. Knight, 3 Sumn. 369, Fed. Cas. No. 15,539.

2 Ewing v. Burnham, 74 Fed. 384; Mutual Bldg. Fund, etc., Savings Bank v. Bossieux, 1 Hughes, 386, Fed. Cas. No. 9,977.

a For Annotation of this § 37, Judicial Code, see footnote v, ante, our § 310.

b See Equity Rule 22, with Annotations, in Appendix, post.

law and equity cases, to wit: (1) in their manner of trial, at law by a jury, in equity by the judge; (2) in the nature of the remedies granted, in law, compensatory or possessory, which if adequate and complete will preclude the granting of equitable remedies, such as injunction, specific performance, and the like; and, (3) in the manner of enforcement of the court's orders, in all cases applicable by the writ of execution and such other process as the state statute may give, but in equity under Equity Rule 8, by acting *in personam* by means of contempt proceedings wherever it is necessary to so enforce the orders and secure the relief sought.

The Constitution of the United States recognizes these two forms of actions, and they cannot be changed or blended in the Federal courts by any provisions of the Constitutions or statutes of the various states.[3]

§ 604. Form of Initial Pleading. The following is given merely by way of suggestion and illustration, and will vary according to the state practice where the Federal court is situated. There should be the usual caption followed by a statement of the citizenship and residence of the parties; the ground or grounds of Federal jurisdiction, amount in controversy, and a statement of a cause of action, legal in its nature, to wit: requiring a possessory or compensatory remedy without equitable incidents. The prayer for relief should be signed by counsel and verified as required by the state practice. The form below will illustrate:

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR THE DISTRICT OF ....., ... DIVISION.

John Jones,
Plaintiff,
vs.
Henry Smith,
Defendant.

COMPLAINT AT LAW.

John Jones for his cause of action, alleges:—

I.

That he is a citizen of the State of ....., residing at ..... in said State, and the defendant is a citizen of the State of ....., residing at ..... in said State.

[3] Simkins' Fed. Suit at Law, page 12, and cases cited.

II.

Here set out the amount or value involved, and, if the jurisdiction depends on a Federal question, direct allegations of the Federal question. In other words, the grounds of Federal jurisdiction.

III.

A statement of facts showing that the claim is legal, in other words, a statement of a cause of action for which the remedies or compensation or possession will be complete and adequate, and not requiring the interposition of equity.

IV.

The prayer for relief.

V.

Signature and verification as prescribed by state practice of the state where the Federal court is located.

It is well to set out the citizenship and residence of the parties, whether the case depends on diverse citizenship or not, as that will give uniformity of pleading in all suits and, except in local actions, will also show whether the venue has been properly laid.[4]

The only remedies that may be sought in a Federal suit at law are possessory or compensatory, and the initial pleading in a suit at law can seek these remedies, and no others.

[4] Whithead v. Shattuck, 138 U. S. 146, 34 L. ed. 873, 11 Sup. Ct. Rep. 276; South Penn. Oil Co. v. Miller, 175 Fed. 735, 99 C. C. A. 305. See also Beatty v. Wilson, 161 Fed. 453.

CHAPTER 20.

ATTACHMENT AND GARNISHMENT IN LAW CASES.

Sec.

610. Attachment and Garnishment—Adoption of State Laws except against National Banks.
611. Rules by Federal Courts Adopting State Attachment Remedies.
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629. Same—Proceeds of Sale—Investment under § 928, R. S.
630. Same—Publication of Warrant under § 929, R. S.
631. Same—Garnishees of Delinquents in Postal Suits under § 930, R. S.
632. Same—Discharge of Warrant on Giving Bond, under § 931, R. S.
633. Same—Adoption of State Attachment Laws and Former Practice Not Affected by Postal Attachment Laws.
634. Garnishment—General Statement.
635. Effect of Garnishment.
636. Notice of Garnishment.
637. Persons and Property Subject to Garnishment.
638. Issue by Garnishee.
639. Judgments against Garnishee.
640. Garnishees in Suits by the Government against Corporations.
641. Same—Issue Tendered When Garnishee Denies Indebtedness.
642. Same—Garnishee in Contempt on Failing to Appear.

§ 610. Attachment and Garnishment—Adoption of State Laws except against National Banks.

§ 915, R. S., Comp. Stat. 1901, p. 684, 4 F. S. A. 577, Rose's Code, § 905. "In common-law causes in the circuit and district courts the plaintiff shall be entitled to similar remedies, by attachment or other process, against the property of the defendant, which are now provided by the laws of the state in which such court is held for the courts thereof; and such circuit or district courts may, from time to time, by general rules, adopt such state laws as may be in force in the states where they are held in relation to attachments and other process: *Provided*, That similar preliminary affidavits or proofs, and similar security, as required by such state laws, shall be first furnished by the party seeking such attachment or other remedy."

Not against national banks.

Pt. § 5242, R. S., Comp. Stat. 1901, p. 3517, 5 F. S. A. 188, Rose's Code, § 907. ". . . no attachment . . . shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any state, county, or municipal court."

Under § 5242, above quoted, the power to issue attachments against national banks being eliminated from state statutes, there would be no right to same in the Federal courts under § 915, allowing adoption of state laws.[1]

§ 611. Rules by Federal Courts Adopting State Attachment Remedies. The rules adopting state laws for attachment proceedings need not be in writing.[2]

It is presumed that the Federal courts have adopted the state statutes.[3]

The Federal courts have a large discretion in these matters.[4]

1 Pacific National Bank v. Mixter, 124 U. S. 721, 31 L. ed. 570, 8 Sup. Ct. Rep. 718.

2 Citizens' Bank v. Farwell, 56 Fed. 570, 6 C. C. A. 24, 12 U. S. App. 409; Logan v. Goodwin, 104 Fed. 490, 43 C. C. A. 658; United States v. Stevenson, 1 Abb. 495, Fed. Cas. No. 16,395.

3 Logan v. Goodwin, 104 Fed. 490, 43 C. C. A. 658; Lowry v. Story, 31 Fed. 771; Fullerton v. United States Bank, 1 Pet. 604, 7 L. ed. 280.

4 Shepard v. Adams, 168 U. S. 625, 42 L. ed. 602, 18 Sup. Ct. Rep. 214.

§ 612. Construction of State Attachment Statutes by State Courts Followed in Federal Courts. The scope, meaning, and application of the state attachment law and practice under it as construed by the state courts will be followed in the Federal courts.[5]

§ 613. Attachment Not a Basis for Substituted Service, but Merely a Provisional Remedy. Attachments in the Federal courts cannot be made the basis for service on an absent defendant by publication because of the requirements of § 51 of the Judicial Code as to the venue of actions requiring the suit to be brought in the district of a defendant's residence, except as in the succeeding sections provided, § 57, Judicial Code, allowing service by publication on absent defendants in suits to enforce liens or remove clouds from title.

"The attachment proceeding, therefore, in the courts of the United States, has altogether a different character from that proceeding *in rem* in common use in the states, the object of which is either to enforce the appearance of the absent defendant or to subject his property to the payment of his debts. In the Federal courts there must be jurisdiction over the person of the defendant and of a subject-matter, independent of the proceeding in attachment, and without which no attachment can be effectual." [6]

"It is conceded that the person against whom this suit was brought in the circuit court (of the United States for the district of Iowa) was an inhabitant of the state of Massachusetts, and was not found in or served with process in Iowa. Clearly, then, he was not suable in the circuit court of the district of Iowa, and unless he could be sued no attachment could issue for that court against his property." [7]

§ 614. Causes of Action in Which Attachments Are Authorized, Governed by State Law. There are some variations

[5] Third Nat. Bank of Baltimore v. Teal, 5 Fed. 503; Fleitas v. Cockrem, 101 U. S. 301, 25 L. ed. 954.

[6] Erstein v. Rothschild, 22 Fed. 61. See also Lovejoy v. Hartford F. Ins. Co. 11 Fed. 63; Lackett v. Rumbaugh, 45 Fed. 23, 29.

[7] Ex parte Ry. Co. 103 U. S. 794, 26 L. ed. 461. See also Toland v. Sprague, 12 Pet. 300, 9 L. ed. 1093.

in the several states as to the kind of action in which an attachment will be permitted. The Federal courts follow the state laws on this subject.[8]

§ 615. Property Subject to Attachment—State Laws Govern. The state laws govern as to the property subject to attachment,[9] but in the Federal courts property of an equitable nature [10] and property *in custodia legis* cannot be attached,[11] except as several levies are allowed as explained in § 586, supra.

§ 616. Affidavit for Attachment should Conform to State Law. The state requirements as to grounds to be stated in the affidavit for attachment by whom to be made, etc., govern such affidavits in the Federal courts.[12]

§ 617. Amendment of Affidavit for Attachment.

> *§ 948, R. S., Comp. Stat. 1901, p. 695, 4 F. S A. 593, Rose's Code, § 840.* "Any circuit or district court may at any time, in its discretion, and upon such terms as it may deem just, allow an amendment of any process returnable to or before it, where the defect has not prejudiced, and the amendment will not injure, the party against whom such process issues."

This section applies to a defective affidavit for attachment.[13]

So, also, with respect to defective affidavit for garnishment though amendment not allowed by state law.[14]

[8] Seeley v. Missouri, K. & T. R. Co. 39 Fed. 253; Rothschild v. Knight, 184 U. S. 334, 46 L. ed. 573, 22 Sup. Ct. Rep. 391.

[9] Thompson v. Baker, 141 U. S. 648, 35 L. ed. 889, 12 Sup. Ct. Rep. 89; Coulson v. Panhandle Nat. Bank, 54 Fed. 858, 4 C. C. A. 616, 13 U. S. App. 39; Bigelow v. Chatterton, 51 Fed. 614, 2 C. C. A. 402, 10 U. S. App. 267; Richmond v. Brookings, 48 Fed. 241; Montgomery v. McDermott, 103 Fed. 801, 43 C. C. A. 348; Simonds v. Pearce, 31 Fed. 137; Hankinson v. Page, 31 Fed. 185, 24 Blatchf. 422.

[10] Shiel v. Patrick, 59 Fed. 992, 8 C. C. A. 440, 20 U. S. App. 407.

[11] Corbitt v. Farmers' Bank, 114 Fed. 602; Henry v. Gold Park Min. Co. 5 McCrary, 70, 15 Fed. 649; Clarke v. Shaw, 28 Fed. 356.

[12] Johnson v. Johnson, 31 Fed. 700; Société Foncière v. Milliken, 135 U. S. 304, 34 L. ed. 208, 10 Sup. Ct. Rep. 823; Glidden v. Whittier, 46 Fed. 437; Bigelow v. Chatterton, 51 Fed. 614, 2 C. C. A. 402, 10 U. S. App. 267.

[13] Erstein v. Rothschild, 22 Fed. 61.

[14] Booth v. Denike, 65 Fed. 43.

Where state law authorizes amendment under certain conditions, these rights will be given in Federal courts.[15]

§ 618. Bond for Attachment. "The plaintiff seeking an attachment in the Federal court against the property of the defendant is required to furnish security in the same manner as to amount and the qualification and residence of the sureties that he would have to furnish if he were proceeding in the state court." [16]

The construction of the bond is governed by state laws.[17]

Amendment of the bond is allowed.[18]

Action on bond may be maintained in Federal court.[19]

§ 619. The Writ of Attachment—Amendment, § 948, R. S. The form and issuance of the writ should conform to state practice.[20]

Increasing amount will not dissolve attachment.[21]

The power to amend in attachment suits is the same as in other cases.[22]

The court seal may be added under § 948, R. S.[23]

§ 620. Lien of Attachment. The lien created by the levy is governed by state laws.[24]

Personal property is taken into the custody of the marshal.[25]

15 Salmon v. Mills, 49 Fed. 333, 1 C. C. A. 278, 4 U. S. App. 101; Fleischner v. Pacific Postal Teleg. Cable Co. 55 Fed. 739; Rothschild v. Knight, 184 U. S. 334, 46 L. ed. 573, 22 Sup. Ct. Rep. 391; Fitzpatrick v. Flannagan, 106 U. S. 648, 27 L. ed. 211, 1 Sup. Ct. Rep. 369.

16 Singer Mfg. Co. v. Mason, 5 Dill. 488, Fed. Cas. No. 12,903. See also Fleitas v. Cockrem, 101 U. S. 301, 25 L. ed. 954; Blue Grass Canning Co. v. Stewart, 175 Fed. 541, 99 C. C. A. 159.

17 Fidelity & D. Co. v. L. Bucki & Son Lumber Co. 189 U. S. 135, 47 L. ed. 744, 23 Sup. Ct. Rep. 582.

18 Bumberger v. Gerson, 24 Fed. 257.

19 Files v. Davis, 118 Fed. 465.

20 Russia Cement Co. v. Le Page Co. 174 Mass. 349, 55 N. E. 70.

21 Cutler v. Lang, 30 Fed. 173.

22 Tilton v. Cofield, 93 U. S. 167, 23 L. ed. 860.

23 Wolf v. Cook, 40 Fed. 432.

24 Haukinson v. Page, 31 Fed. 184, 24 Blatchf. 422.

25 Adler v. Roth, 5 Fed. 895, 2 McCrary. 445; Coulson v. Panhandle Nat. Bank, 54 Fed. 855–8, 4 C. C. A. 616, 13 U. S. App. 39. See Dudley v. Lamoille Co. Nat. Bank, 14 Fed. 217; Richmond v. Brookings, 48 Fed. 241; People's Sav. Bank. & T. Co. v. Batchelder-Egg Case Co. 51 Fed. 131–137, 2

By § 60, Judicial Code, quoted § 170, supra, and in the Appendix, post, it is provided that the lien of an attachment or seizure, etc., shall not be devested by a change of boundaries, but a certified copy filed in the court of the division or district where the property was located after the change would have the effect of an original.

§ 621. Priorities—Several Attachments. The Federal and state courts are of co-ordinate authority in administering the state attachment laws. The court under whose authority the first levy is made, is entitled to the actual custody and possession of the property.[26] The Federal courts are entitled, however, to make a constructive levy on property in the possession of a state officer when the state law authorizes successive levies and a method of settling priorities.[27]

Likewise the state authorities may constructively levy on property in the possession of the marshal, and intervene in proceedings in the Federal courts in the same district.[28]

The rights of other creditors will be preserved in the Federal courts even if their claims are less than the jurisdictional amount required to sustain a suit, in such courts,[29] and without reference to the citizenship of the parties.[30]

On removal the Federal courts will distribute the fund or proceeds of attached property under the state laws.[31]

§ 622. Delivery Bond. The provision of a state law, or the redelivery of attached property to the defendant upon his furnishing a delivery bond, is recognized and followed in the Federal

C. C. A. 126, 4 U. S. App. 603; Hankinson v. Page, 31 Fed. 184, 24 Blatchf. 422.

[26] Adler v. Roth, 5 Fed. 895, 2 McCrary, 445; Bates v. Days, 17 Fed. 167, 5 McCrary, 342.

[27] Brooks v. Fry, 45 Fed. 776.

[28] Gumbel v. Pitkin, 124 U. S. 131, 31 L. ed. 374, 8 Sup. Ct. Rep. 379; Bates v. Days, 17 Fed. 167, 5 McCrary, 342.

[29] Krippendorf v. Hyde, 110 U. S. 284, 28 L. ed. 145, 4 Sup. Ct. Rep. 27; Rice v. Adler-Goldman Co. 71 Fed. 151, 18 C. C. A. 15.

[30] Gumbel v. Pitkin, 124 U. S. 132, 31 L. ed. 374, 8 Sup. Ct. Rep. 379; Fountain v. 624 Pieces of Timber, 140 Fed. 381; Hatcher v. Hendrie & B. Mfg. & Supply Co. 133 Fed. 267, 68 C. C. A. 19; Central Trust Co. v. Worcester Cycle Mfg. Co. 128 Fed. 483.

[31] Bankers & M. Tel. Co. v. Chicago Carpet Co. 28 Fed. 398.

courts.[32] Likewise a provision of state law not permitting a delivery bond to release attached money will be recognized in the Federal courts.[33]

§ 623. Third-Party Claims Follow State Laws. The provision of a state law permitting a third party to claim attached property by affidavit of ownership and furnishing bond will be followed in the Federal courts.[34] The raising of the issue of ownership has also been permitted by motion to vacate the attachment.[35]

§ 624. Dissolution of Attachments under § 923, R. S.—Conforms to State Laws.

§ 923, R. S., Comp. St. 1901, p. 689, 1 F. S. A. 515, Rose's Code, § 906. "(Attachments dissolved in conformity with state laws.) An attachment of property, upon process instituted in any court of the United States, to satisfy such judgment as may be recovered by the plaintiff therein, except in the cases mentioned in the preceding nine sections (in postal suits), shall be dissolved when any contingency occurs by which, according to the laws of the state where said court is held, such attachment would be dissolved upon like process instituted in the courts of said state: *Provided,* That nothing herein contained shall interfere with any priority of the United States in the payment of debts."

§ 625. Attachments in Postal Suits.

§ 924, R. S., Comp. Stat. 1901, p. 686, 1 F. S. A. 513, Rose's Code, § 1399. "In all cases where debts are due from defaulting or delinquent postmasters, contractors, or other officers, agents, or employees of the Postoffice Department, a warrant of attachment may issue against all real and personal property and legal and equitable rights belonging to such officer, agent, or employee, and his sureties, or either of them, in the following cases:

32 Ebner v. Heid, 125 Fed. 680, 60 C. C. A. 370.
33 United States v. Neely, 154 Fed. 496.
34 Marden v. Starr, 107 Fed. 199; Batavia v. Wallace, 102 Fed. 240, 42 C. C. A. 310; Tennent-Stribling Shoe Co. v. Roper, 128 Fed. 40, 62 C. C. A. 548.
35 United States v. Nealey, 146 Fed. 763.

"First. When such officer, agent, or employee, and his sureties, or either of them, is a nonresident of the district where such officer, agent, or employee was appointed, or has departed from such district for the purpose of permanently residing out of the same, or of defrauding the United States, or of avoiding the service of civil process.

"Second. When such officer, agent, or employee, and his sureties, or either of them, has conveyed away, or is about to convey away his property, or any part thereof, or has removed or is about to remove the same or any part thereof from the district wherein it is situate, with intent to defraud the United States.

"And when any such property has been removed, certified copies of the warrant may be sent to the marshal of the district into which the same has been removed, under which certified copies he may seize said property and convey it to some convenient point within the jurisdiction of the court from which the warrant originally issued. And alias warrants may be issued in such cases upon due application, and the validity of the warrant first issued shall continue upon due application, and the validity of the warrant first issued shall continue until the return day thereof."

§ 626. Same—Application for Warrant under § 925, R. S.

§ *925, R. S., Comp. Stat. 1901, p. 687, 1 F. S. A. 515, Rose's Code, § 1400.* "Application for such warrant of attachment may be made by any district or assistant district attorney, or any other person authorized by the Postmaster General, before the judge, or, in his absence, before the clerk of any court of the United States having original jurisdiction of the cause of action. And such application shall be made upon an affidavit of the applicant, or of some other credible person, stating the existence of either of the grounds of attachment enumerated in the preceding section, and upon production of legal evidence of the debt."

§ 627. Same—Issuing Warrant—Duties of Clerk and Marshal under § 926, R. S.

§ *926, R. S., Comp. Stat. 1901, p. 687, 1 F. S. A. 513, Rose's Code, § 1401.* "Upon any such application and upon due order of any judge of the court, or, in his absence, without such order, the clerk shall issue a warrant for the attachment of all the property of any kind belonging to the

person specified in the affidavit, which warrant shall be executed with all possible despatch by the marshal, who shall take the property attached, if personal, into his custody, and hold the same subject to all interlocutory or final orders of the court."

§ 628. Same—Ownership of Property—Trial under § 927, R. S.

§ *927, R. S., Comp. Stat. 1901, p. 687, 1 F. S. A. 514, Rose's Code, § 1402.* "At any time within twenty days before the return day of such warrant, the party whose property is attached may, on giving notice to the district attorney of his intention, file a plea in abatement, traversing the allegations of the affidavit, or denying the ownership of the property attached to be in the defendants or either of them; in which case the court may, upon application of either party, order an immediate trial by jury of the issues raised by the affidavit and plea; but the parties may, by consent, waive a trial by jury, in which case the court shall decide the issues raised. And any party claiming ownership of the property attached and a specific return thereof shall be confined to the remedy herein afforded, but his right to an action of trespass, or other action for damages, shall not be impaired hereby."

§ 629. Same—Proceeds of Sale—Investment under § 928, R. S.

§ *928, R. S., Comp. Stat. 1901, p. 688, 1 F. S. A. 514, Rose's Code, § 1403.* "When the property attached is sold on any interlocutory order of the court or is producing any revenue, the money arising from such sale or revenue shall be invested in securities of the United States, under the order of the court, and all accretions shall be held subject to the orders of the same."

§ 630. Same—Publication of Warrant under § 929, R. S.

§ *929, R. S., Comp. St. 1901, p. 688, 1 F. S. A. 515, Rose's Code, § 1404.* "Immediately upon the execution of any such warrant of attachment, the marshal shall cause due publication thereof to be made, in the case of absconding debtors for two months and of nonresidents for four months. The publication shall be made in some newspaper published in the district where the property is situate, and the details

thereof shall be regulated by the order under which the warrant is issued."

§ 631. Same—Garnishees of Delinquents in Postal Suits under § 930, R. S.

§ 930, R. S., Comp. Stat. 1901, p. 688, 1 F. S. A. 515, Rose's Code, § 145. "After the first publication of such notice of attachment as required by law, every person indebted to, or having possession of any property belonging to, the said defendants, or either of them, and having knowledge of such notice, shall account and answer for the amount of such debt and the value of such property; and any disposal or attempt to dispose of any such property, to the injury of the United States, shall be illegal and void. And when the person indebted to, or having possession of the property of, such defendants, or either of them, is known to the district attorney or marshal, such officer shall see that personal notice of the attachment is served upon such person, but the want of such notice shall not invalidate the attachment."

§ 632. Same—Discharge of Warrant on Giving Bond under § 931, R. S.

§ 931, R. S., Comp. Stat. 1901, p. 688, 1 F. S. A. 515, Rose's Code, § 1406. "Upon application of the party whose property has been attached, the court, or any judge thereof, may discharge the warrant of attachment as to the property of the applicant, provided such applicant shall execute to the United States a good and sufficient penal bond, in double the value of the property attached, to be approved by a judge of the court, and with condition for the return of said property, or to answer any judgment which may be rendered by the court in the premises."

§ 633. Same—Adoption of State Attachment Laws and Former Practice Not Affected by Postal Attachment Laws.

§ 932, R. S., Comp. Stat. 1901, p. 689, 1 F. S. A. 515, Rose's Code, § 1407. "Nothing contained in the preceding eight sections shall be construed to limit or abridge, in any manner, such rights of the United States as have accrued or been allowed in any district under the former practice of, or the adoption of state laws by, the United States courts."

§ 634. Garnishment—General Statement. Under § 915, R. S., quoted in § 610 above, garnishment proceedings and the rights and liabilities thereunder as prescribed by state laws may be adopted by the Federal courts.[36]

Thus the effect of garnishment;[37] a notice of garnishment;[38] the persons and property subject to garnishment;[39] the raising of the issue by the garnishee[40] and the judgment against the garnishee;[41] all conform to the state practice.

§ 635. Effect of Garnishment. A garnishee may not be placed in any worse condition than he would if defendant were prosecuting the claim against him, but otherwise he takes the place of the judgment debtor in relation to the attaching creditor.[42]

§ 636. Notice of Garnishment. The state law governs the sufficiency of the notice served on the garnishee.[43]

§ 637. Persons and Property Subject to Garnishment. The persons who may be garnished and the kinds of property for which they must answer are governed by state laws.[44]

A debtor under a judgment in a Federal court cannot be subjected to a garnishment in the state court, as that would cause a conflict of jurisdictions greatly inconvenient.[45]

Debt not due may be garnished.[46]

§ 638. Issue by Garnishee. The practice as to raising issues by a garnishee conforms to state practice except as to appeal from judgments against him.[47]

36 Randolph v. Tandy, 98 Fed. 939, 39 C. C. A. 351; Wile v. Cohn, 63 Fed. 759.
37 § 635, post.
38 § 636, post.
39 § 637, post.
40 § 638, post.
41 § 639, post.
42 Fidelity Trust Co. v. N. Y. Finance Co. 125 Fed. 275, 60 C. C. A. 189; Allen v. Ætna Life Ins. Co. 145 Fed. 881, 76 C. C. A. 265.
43 Logan v. Goodwin, 104 Fed. 490, 43 C. C. A. 658; Wile v. Cohn, 63 Fed. 759.
44 Moscow Hardware Co. v. Colson, 158 Fed. 199; Johnson v. Union Pac. R. R. 145 Fed. 249.
45 Henry v. Gold Park Min. Co. 15 Fed. 649, 5 McCrary, 70.
46 Smith v. Marker, 154 Fed. 838, 85 C. C. A. 372.
47 Schuler v. Israel, 120 U. S. 506, 30 L. ed. 707, 7 Sup. Ct. Rep. 648.

§ 639. Judgments against Garnishee. The entry of judgment against the garnishee is governed by state laws, and on admission of indebtedness or proof that he is not indebted the state law giving reasonable attorneys' fees,[48] and also costs,[49] is enforced. Where the state law authorizes the garnishee to deliver up property to the officer, and be relieved without judgment, the law will be followed.[50] Also, where the state law requires a suit, instead of a garnishment process, against the attached debtor, that law will be followed.[51]

§ 640. Garnishees in Suits by the Government against Corporations.

§ 935, R. S., Comp. St. 1901, p. 689, 3 F. S. A. 154, Rose's Code, § 1412. "In any suit by the United States against a corporation for the recovery of money upon a bill, note, or other security, the debtors of the corporation may be summoned as garnishees; and it shall be the duty of any person so summoned to appear in open court and to depose, in writing to the amount which he was indebted to the said corporation at the time of the service of the summons and at the time of making such deposition; and judgment may be entered in favor of the United States for the sum admitted by such garnishee to be due to the said corporation, in the same manner as if it had been due to the United States: *Provided,* That no judgment shall be entered against any garnishee until after judgment has been rendered against the corporation defendant to the said action, nor until the sum in which the garnishee stands indebted is actually due."

§ 641. Same—Issue Tendered When Garnishee Denies Indebtedness.

§ 936, R. S., Comp. Stat. 1901, p. 690, 3 F. S. A. 154, Rose's Code, § 1413. "When any person summoned as garnishee deposes in open court that he is not, and was not at the time of the service of the summons, indebted to such corporation, an issue may be tendered by the United States upon

[48] New York Finance Co. v. Potter, 126 Fed. 432.
[49] Rome R. Co. v. Richmond, etc., Co. 60 Fed. 43.
[50] Allen-West Commission Co. v. Grumbles, 129 Fed. 288, 63 C. C. A. 401; Hatcher v. Hendrie Swiss etc. Co. 133 Fed. 267, 68 C. C. A. 19.
[51] Brandenstein v. Halvetia Swiss Fire Ins. Co. 159 Fed. 589, also Helvetia Swiss Fire Ins. Co. v. Brandenstein, 168 Fed. 1020, 92 C. C. A. 614.

such demand, and if, upon the trial of that issue, a verdict is rendered against the garnishee, judgment shall be entered in favor of the United States, pursuant to such verdict, with costs of suit."

§ 642. Same—Garnishee in Contempt on Failing to Appear.

§ 937, R. S., Comp. Stat. 1901, p. 690, 3 F. S. A. 154, Rose's Code, § 1414. "If any person summoned as garnishee, as aforesaid, fails to appear at the term of the court to which he is summoned, he shall be subject to attachment for contempt of the court."

CHAPTER 21.

PROCESS LAW ACTIONS.

Sec.
650. In General.
651. When Suit is Begun.
652. The Forms of Process for the Commencement of Suits, except as to Signature, Teste, and Sealing, Conform to State Practice.
653. Amendment of Process.
654. By Whom Process is Served.
655. Method of Service of Process.
656. Service by Publication under § 57, Judicial Code.
657. Special Appearance.
658. Suit *in Forma Pauperis.*

§ 650. In General. Under § 721, R. S., the Federal courts, in following the laws of the several states, adopt the state statutes of limitations except where otherwise prescribed by Federal statutes, and in like manner follow the state law as to what is the beginning of a suit.[1]

The form and body of process follow the state practice under the conformity act § 914, R. S., but the signatures, seal, and teste are covered by §§ 911, 912, R. S.,[2] and amendment of process by §§ 948, 954, R. S.[3] The sufficiency of process, because relating to jurisdiction, does not conform to state law, but is governed by Federal decisions,[4] so also with respect to special appearances.[5] By whom process is served is provided in §§ 787, 788, R. S.[6] The method of service, except substituted service which is governed by § 57, Judicial Code, follows the state practice.[7] A suit *in forma pauperis* is authorized under act July 20, 1892, chapter 209.[8]

§ 651. When Suit is Begun. Under § 721, R. S., relating to the adoption of state rules of decision, the Federal courts

[1] § 651, infra. [2] § 652, infra. [3] § 653, infra. [4] § 655, infra. [5] § 657, infra. [6] § 654, infra. [7] § 655, infra. [8] §658, infra.

follow the state laws of limitation.[9] So, also, a state ruling that the filing of a petition in a court of the proper jurisdiction is the begining of the suit has been followed by the Federal court.[10] There should be, however, the issuance of process and a bona fide effort to serve same.[11]

§ 652. The Forms of Process for the Commencement of Suits, except as to Signature, Teste, and Sealing, Conform to State Practice.[12] Indorsements upon the copy of summons in actions for penalties brought by the United States thus conform.[13] If the Federal courts have adopted by rule of court a form of process conforming to the state law, a subsequent change of the state law would have to be adopted to render improper a writ under the old form.[14]

> *§ 911, R. S., Comp. Stat. 1901, p. 683, 4 F. S. A. 560, Rose's Code, § 836.* "All writs and processes issuing from the courts of the United States shall be under the seal of the court from which they issue, and shall be signed by the clerk thereof. Those issuing from the Supreme Court or a circuit court shall bear teste of the Chief Justice of the United States, or, when that office is vacant, of the associate justice next in precedence, and those issuing from a district court shall bear teste of the judge, or, when that office is vacant, of the clerk thereof. The seals of said courts shall be provided at the expense of the United States."
>
> *§ 912, R. S., Comp. Stat. 1901, p. 683, 4 F. S. A. 560, Rose's Code, § 837.* "All process issued from the courts of the United States shall bear teste from the day of such issue."

[9] Chapter 13, Statutes of Limitations.

[10] International Bank & Trust Company v. Scott, 159 Fed. 60, 86 C. C. A. 248; Goldenberg v. Murphy, 108 U. S. 162, 27 L. ed. 686, 2 Sup. Ct. Rep. 388; Re Connaway, 178 U. S. 430, 44 L. ed. 1137, 20 Sup. Ct. Rep. 951; Deep Water R. Co. v. Western Pocahontas Coal & Lumber Co. 152 Fed. 824.

[11] United States v. American Lumber Co. 80 Fed. 315; Michigan Ins. Bank v. Eldred, 130 U. S. 697, 32 L. ed. 1082, 9 Sup. Ct. Rep. 690.

[12] Gillum v. Stewart, 112 Fed. 32; Middleton Paper Co. v. Rock River Paper Co. 19 Fed. 252; Brown v. Pond, 5 Fed. 31; Peaslee v. Haberstro, 15 Blatchf. 472. Fed. Cas. No. 10.884.

[13] United States v. Rose, 14 Fed. 681; Miller v. Gages, 4 McLean, 436, Fed. Cas. No. 9,571.

[14] Shepard v. Adams, 168 U. S. 624, 42 L. ed. 604, 18 Sup. Ct. Rep. 214; Elson v. Waterford, 135 Fed. 247.

A garnishment notice does not come under the requirements of §§ 911 and 912, R. S., but is governed by § 915, R. S., and if it conforms under the later section to the state court procedure it will be held valid.[15]

§ 653. Amendment of Process.

§ 948, R. S., Comp. Stat. 1901, p. 695, 4 F. S. A. 593, Rose's Code, § 840. "Any circuit or district court may at any time, in its discretion, and upon such terms as it may deem just, allow an amendment of any process returnable to or before it, where the defect has not prejudiced, and the amendment will not injure, the party against whom such process issues."

§ 954, R. S., Comp. Stat. 1901, p. 696, 4 F. S. A. 596, Rose's Code, § 813. "No summons, writ, declaration, return, process, judgment, or other proceedings in civil causes, in any court of the United States, shall be abated, arrested, quashed, or reversed for any defect or want of form; but such court shall proceed and give judgment according as the right of the cause and matter in law shall appear to it, without regarding any such defect, or want of form, except those which, in cases of demurrer, the party demurring specially sets down, together with his demurrer, as the cause thereof; and such court shall amend every such defect and want of form, other than those which the party demurring so expresses; and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as it shall, in its discretion and by its rules, prescribe."

Illustrations of amendments under the foregoing statutes are as follows: a district court summons bearing teste of Chief Justice;[16] striking out of a summons and declaration "administrator, etc., and inserting executor, etc.;"[17] altering date of writs made returnable on Sunday on another wrong day;[18] changing date

[15] Wile v. Cohn, 63 Fed. 759; Middleton Paper Co. v. Rock River Paper Co. 19 Fed. 252.

[16] United States v. Turner, 50 Fed. 734.

[17] Randolph v. Barrett, 16 Pet. 138, 10 L. ed. 914.

[18] Norton v. Dover, 14 Fed. 106; Hampton v. Rouse, 15 Wall. 684, 21 L. ed. 250; Semmes v. United States, 91 U. S. 21, 23 L. ed. 193.

of summons;[19] changing name of plaintiff in summons to conform to complaint.[20]

Not every defect, however, will be allowed to be amended. A summons not signed nor under seal of court is not amendable,[21] nor a defective indorsement of substantive matter.[22]

The power of amendment conferred by these statutes cannot be diminished, but may be enlarged by state practice if the Federal courts adopt the state rule.[23]

§ 654. By Whom Process Is Served.

§ *787, R. S., Comp. Stat. 1901, p. 608, 4 F. S. A. 159, Rose's Code,* § *644.* "It shall be the duty of the marshal of each district to attend the district and circuit courts when sitting therein, and to execute, throughout the district, all lawful precepts directed to him, and issued under the authority of the United States; and he shall have power to command all necessary assistance in the execution of his duty."

§ *788, R. S., Comp. Stat. 1901, p. 608, 4 F. S. A. 161, Rose's Code,* § *660.* "The marshals and their deputies shall have, in each state, the same powers, in executing the laws of the United States, as the sheriffs and their deputies in such state may have, by law, in executing the laws thereof."

The marshal is the executive officer of the court, and no other person is authorized to serve process directed to him except himself or his deputy.[24] Where a state law permits original process to be served by a private person, that law cannot be followed in the Federal court, but it must be served by the marshal or his deputy.[25] Independently of state laws, the marshals of the United States have power to deputize persons for the service of writs.[26]

19 Gilbert v. S. Carolina, etc., Exp. Co. 113 Fed. 523.
20 Gulf, etc., C. Co. v. James, 48 Fed. 148, 1 C. C. A. 53.
21 Dwight v. Merritt, 4 Fed. 614, 18 Blatchf. 305.
22 Brown v. Pond, 5 Fed. 31.
23 Norton v. Dover, 14 Fed. 106.
24 Schwabacker v. Reilly, 2 Dill. 127, 21 Fed. Cas. No. 12,501.
25 Ibid., and see Shepard v. Adams, 168 U. S. 624, 42 L. ed. 604, 18 Sup. Ct. Rep. 214.
26 The Tug. E. W. Gorgas, 10 Ben. 460, 8 Fed. Cas. No. 4,585.

§ 655. Method of Service of Process. The Federal statutes do not designate how service shall be made in suits at law, and accordingly the method of service conforms to state practice under § 914, R. S.,[27] except substituted service under § 57, Judicial Code.

"The laws of the state providing for the service of process of state courts in actions at law furnish the rules for procedure in such case in this (Federal) court, so that whatever would be lawful service of process to bring a party into court if the action were in a court of competent jurisdiction under the state government is lawful and sufficient for the purpose of actions commenced in this court." [28]

Substituted service is governed by § 57, Judicial Code, as set out in the succeeding section. The sufficiency of service to give jurisdiction, as in all other jurisdictional matters, does not conform to state laws, but the Federal courts determine for themselves.[29]

Service on corporations conforms as a general rule to state laws.[30]

On foreign corporations state laws will generally be followed if the corporation is doing business in the state of the forum.[31]

§ 656. Service by Publication under § 57, Judicial Code. Service by publication does not come within the above rule. State statutes regulating the manner of bringing in absent defendants by publication are not applicable to the Federal courts. The mode provided by § 57, Judicial Code, for acquiring jurisdiction over an absent defendant by publication is exclusive of every other mode,[32] and must be strictly followed.[33] The action

27 Toledo Computing S. Co. v. Computing Scale Co. 142 Fed. 919, 74 C. C. A. 89; Amy v. Watertown, 130 U. S. 302, 32 L. ed. 947, 9 Sup. Ct. Rep. 530; Swarts v. Christie Grain and Stock Co. 166 Fed. 338.

28 Van Dresser v. Oregon R. Co. 48 Fed. 202.

29 Michigan Trust Co. v. Ferry, 175 Fed. 667, 99 C. C. A. 221; Clark v. Wells, 203 U. S. 164, 51 L. ed. 138, 27 Sup. Ct. Rep. 43.

30 Higham v. Iowa State Travelers Ass'n, 183 Fed. 845.

31 McCord Lumber Co. v. Doyle, 97 Fed. 22, 38 C. C. A. 34, and numerous cases cited in 4 F. S. A. 569.

32 Bracken v. Union Pac. R. Co. 56 Fed. 447, 5 C. C. A. 548; New York Life Ins. Co. v. Bangs, 103 U. S. 435, 26 L. ed. 580.

33 Jennings v. Johnson, 148 Fed. 337, 78 C. C. A. 329; King v. Davis, 137 Fed. 207.

must be *in rem* for the statute to apply.[34] Attachment cannot be made a basis for substituted service in the Federal courts.[35]

§ 57, *Judicial Code,*[a] *36 Stat. at L. 1102, Comp. St. 1911, p. 152, 1912 Supp. F. S. A. p. 155.* "When in any suit commenced in any district court of the United States to enforce any legal or equitable lien upon or claim to, or to remove any encumbrance or lien upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks. In case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district; and when a part of the said real or personal property against which such proceedings shall be taken shall be within another district, but within the same state, such suit may be brought in either district in said state: *Provided, however,* That any defendant or defendants not actually personally notified as above provided may, at any time within one year

[34] Jones v. Gould, 141 Fed. 698; and also Jones v. Gould, 149 Fed. 153, 80 C. C. A. 1.

[35] § 613, infra.

[a] For Annotation of this § 57, Judicial Code, see footnote [f], ante, our § 166.

after final judgment in any suit mentioned in this section, enter his appearance in said suit in said district court, and thereupon the said court shall make an order setting aside the judgment therein and permitting said defendant or defendants to plead therein on payment by him or them of such costs as the court shall deem just; and thereupon said suit shall be proceeded with to final judgment according to law."

§ 657. Special Appearance. A special appearance is for the sole purpose of attacking the jurisdiction of the court. The Federal courts, being courts of limited jurisdiction, encourage special appearances, and will not, therefore, give such an appearance the force and effect of a general appearance though that may be the effect of state laws.[36]

§ 658. Suit in Forma Pauperis.

§ *3, Act July 20, 1892, ch. 209, 27 Stat. at L. 252, Comp. Stat. 1901, p. 707, 2 F. S. A. 294, Rose's Code,* § *1825.* "The officers of such court shall issue, serve all process, and perform all duties in such cases, and witnesses shall attend as in other cases, and the plaintiff shall have the same remedies as are provided by law in other cases." [37]

[36] Southern P. Co. v. Denton, 146 U. S. 208, 36 L. ed. 945, 13 Sup. Ct. Rep. 44; and other cases cited in Simkins "A Federal Suit at Law" and Simkins Federal Equity Suit, 2d ed., pp. 329 to 338.

[37] Boyle v. Great Northern R. Co. 63 Fed. 539; Donovan v. Salem & P. Nav. Co. 134 Fed. 317; Taylor v. Adams Exp. Co. 164 Fed. 616, 90 C. C. A. 526; Columb v. Webster Mfg. Co. 76 Fed. 198; Gallaway v. State Natl. Bank of Ft. Worth, 186 U. S. 177, 46 L. ed. 1111, 22 Sup. Ct. Rep. 811.

CHAPTER 22.

DEFENSIVE PLEADING LAW ACTIONS.

Sec.
670. In General.
671. Time and Order of Pleading Conform to State Laws.
672. Default Judgment.
673. Forms of Pleadings Conform to State Practice.
674. Sufficiency, Scope, and Manner of Pleading Conform to State Laws.
675. Equitable Defenses Not Permitted. Exception.
676. Amendment of Pleading.

§ 670. In General. The time for pleading, unless special rules determine otherwise, follows state practice.[1]

Under § 918, R. S., the district courts may make rules for entering judgments by default, and under § 961, R. S., provision is made for judgment by default in suits by the government on bonds. Defaults may, however, follow state practice.[2]

The form of pleading is that provided by the state law wherein the district lies.[3]

The sufficiency and scope of the pleading is governed by state laws.[4]

State laws are also followed except as to equitable defenses, which are not permitted, except equitable estoppel.[5]

Amendment of pleading is under §§ 918, 954, R. S.[6]

§ 671. Time and Order of Pleading Conform to State Laws. The state statutes and practice are followed as to the time for pleading.[7]

Under § 914, R. S., the district courts of the United States are

1 § 671, infra. 2 § 672, infra. 3 § 673, infra.
4 § 674, infra. 5 § 675, infra. 6 § 676, infra.
7 Wertheim v. Continental R. Co. 11 Fed. 689, 20 Blatchf. 508; Ricard v. New Providence Tp. 5 Fed. 433; Phenix Ins. Co. v. Charleston Bridge Co. 65 Fed. 628, 13 C. C. A. 58.

authorized to follow the practice of the courts of the state in regard to the order of pleading, including the manner in which objections may be taken to the jurisdiction and the question as to whether objections to jurisdiction and defenses on the merits should be pleaded successively or together.[8] Thus, the state laws have been followed as to the order of filing pleas in abatement.[9]

§ 672. Default Judgment.

§ *918, R. S., Comp. Stat. 1901, p. 685, 4 F. S. A. 585, Rose's Code,* § *805.* ". . . District courts may, from time to time, and in any manner not inconsistent with any law of the United States, . . . make rules and orders directing . . . the entering and making of judgments by default. . . ."

§ *961, R. S., Comp. Stat. 1901, p. 699, 4 F. S. A. 604, Rose's Code,* § *1858.* "In all suits brought to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other specialty, where the forfeiture, breach, or nonperformance appears by the default or confession of the defendant, or upon demurrer, the court shall render judgment for the plaintiff to recover so much as is due according to equity. And when the sum for which judgment should be rendered is uncertain, it shall, if either of the parties request it, be assessed by a jury."

The state statute and practice for setting aside judgment by default has been followed.[10]

If the defendant fails to make an appearance within the time allowed for making an appearance under the state statutes, it would seem that the plaintiff might have a judgment entered by default in conformity therewith, under the rule that state laws govern as to time within which to plead.

[8] Southern Pac. Co. v. Denton, 146 U. S. 209, 36 L. ed. 945, 13 Sup. Ct. Rep. 44.

[9] Tennis Bros. Co. v. Wetzel & T. R. C. 140 Fed. 193, Idem. 145 Fed. 458, 75 C. C. A. 266. 7 Ann. Cas. 426; Derk. P. Yonkerman Co. v. Chas. H. Fuller's Advertising Agency, 135 Fed. 613.

[10] Brown v. Philadelphia, etc., R. Co. 9 Fed. 183; Republic Ins. Co. v. Williams, 3 Biss. 370, Fed. Cas. No. 11,707.

As to what constitutes a sufficient appearance to save from default, the state laws govern. Thus, in Illinois a motion to quash a service of summons was held to be sufficient appearance,[11] and in Nebraska a motion for security for costs was sufficient to save from default.[12] It would not be safe in California to rely on any such pleadings under the California law requiring the defendant to either demur or answer within the time allowed to plead.

§ 673. Forms of Pleadings Conform to State Practice. The form of defensive pleading is that existing in the state court of the forum, whether by plea, answer, demurrer, or other form of defensive pleading.[13]

Thus a state rule allowing a plea in abatement to the jurisdiction and on the merits to be set up in the answer may be followed in the Federal courts.[14]

So, also, the verification of pleadings is governed by state laws for similar cases in the Federal courts.[15]

§ 674. Sufficiency, Scope, and Manner of Pleading Conform to State Laws. The sufficiency and scope of pleadings in actions at law are matters in which the district courts will conform to the practice of the courts of record of the states in which they are held.[16]

Thus a state law requiring a plea of *res judicata* to be specially pleaded was followed in the Federal court,[17] and a state law giving effect to general issue was followed by the Federal courts.[18]

11 Wall v. Chesapeake, etc., R. Co. 95 Fed. 398, 37 C. C. A. 129.
12 Schofield v. Palmer, 137 Fed. 754.
13 Roberts v. Lewis, 144 U. S. 656, 12 Sup. Ct. Rep. 781, 36 L. ed. 582.
14 Draper v. Town of Springport, 21 Blatchf. 240, 15 Fed. 328.
15 St. Louis, etc., R. Co. v. Knight, 122 U. S. 96, 30 L. ed. 1083, 7 Sup. Ct. Rep. 1132; County of Ralls v. Douglass, 105 U. S. 728, 26 L. ed. 957; Cottier v. Stimson, 9 Sawy. 435, 18 Fed. 689.
16 Glenn v. Sumner, 132 U. S. 156, 33 L. ed. 301, 10 Sup. Ct. Rep. 41, and other numerous cases cited in 4 F. S. A. p. 570, bottom second column.
17 Preferred Acc. Ins. Co. v. Barker, 93 Fed. 158, 35 C. C. A. 250.
18 Hodges v. Easton, 106 U. S. 410, 27 L. ed. 170, 1 Sup. Ct. Rep. 307; Burley v. German Am. Bank, 111 U. S. 221, 28 L. ed. 407, 4 Sup. Ct. Rep. 341.

The right to plead a set-off or counterclaim when not equitable in character will be controlled by the state practice.[19]

Questions of law may be raised by motion where state law permits. So, also, state rules as to demurrers are followed in the Federal courts.[20] So, also, the state pleading as to the filing of a replication or making an issue without one will be followed in the Federal courts.[21]

Amendments, however, are governed by § 954, R. S.[22]

§ 675. Equitable Defenses Not Permitted. Exception. Equitable defenses, except equitable estoppel, cannot be pleaded at law. Equitable estoppel may be pleaded.[23]

The following are illustrations of cases where equitable defenses were not permitted, or the defendant was compelled to enjoin the suit at law in order to avail himself thereof:

Laches,[24] want of consideration,[25] improvements in good faith,[26] fraud on account of undue influence or gross inadequacy of consideration,[27] bona fide purchaser,[28] partnership settlement,[29] equitable title.[30] A very excellent discussion of this subject is contained in chapter 7 of Simkins' "A Federal Suit at Law," beginning page 39.

Act June 1, 1874, ch. 200, 18 Stat. at L. 50, Comp. Stat. 1901, p. 581, 6 F. S. A. 522, Rose's Code, § 28. "When

19 Groton Bridge & Mfg. Co. v. American Bridge Mfg. Co. 151 Fed. 879.

20 Sommer v. Carbon Hill Coal Co. 89 Fed. 60, 32 C. C. A. 156, 59 U. S. App. 519; Norfolk & P. Traction Co. v. Rephan, 188 Fed. 276, 110 C. C. A. 254.

21 Stratton v. Essex Co. Park Comm. 164 Fed. 901.

22 § 653, infra.

23 Kirk v. Hamilton, 102 U. S. 68, 26 L. ed. 79; Campbell v. Golden Cycle Mining Co. 141 Fed. 610, 73 C. C. A. 260; Berry v. Seawall, 65 Fed. 742, 13 C. C. A. 101, 31 U. S. App. 30.

24 Korsstrom v. Barnes, 156 Fed. 284; United States Fidelity & G. Co. v. United States, 189 Fed. 339, 111 C. C. A. 71.

25 Burnes v. Scott, 117 U. S. 582, 29 L. ed. 992, 6 Sup. Ct. Rep. 865.

26 Doe ex dem. Myrick v. Roe, 31 Fed. 98; Leighton v. Young, 52 Fed. 439, 3 C. C. A. 176, 10 U. S. App. 298, 18 L.R.A. 266, but see Cooke v. Avery, 147 U. S. 392, 37 L. ed. 215, 13 Sup. Ct. Rep. 340.

27 Kilbourn v. Sunderland, 130 U. S. 505, 32 L. ed. 1005, 9 Sup. Ct. Rep. 594; Boggs v. Wann, 58 Fed. 687.

28 Scott v. Neely, 140 U. S. 111, 35 L. ed. 360, 11 Sup. Ct. Rep. 712.

29 Johnson v. Christian, 128 U. S. 382, 32 L. ed. 414, 9 Sup. Ct. Rep. 87.

30 Foster v. Mora, 98 U. S. 428, 25 L. ed. 192.

an occupant of land, having color of title, in good faith has made valuable improvements thereon, and is, in the proper action, found not to be the rightful owner thereof, such occupant shall be entitled in the Federal courts to all the rights and remedies, and, upon instituting the proper proceedings, such relief as may be given or secured to him by the statutes of the state or territory where the land lies, although the title of the plaintiff in the action may have been granted by the United States after said improvements were so made."

§ 676. Amendment of Pleading. § 918, R. S., permits the Federal courts to make rules relating to "the filing of pleadings, taking of rules, . . . and otherwise regulate their own practice;" [31] and § 954 permits the court to amend defects and want of form "in the process or pleadings, upon such conditions as it shall, in its discretion and by its rules, prescribe." [32] These sections govern the matter of amendment of pleadings in the Federal court, except in so far as state rules and practice may be adopted which are not inconsistent with the Federal rules.

In many cases amendments of pleadings have been allowed in conformity with state practice, and in many others they have been refused. The matter is entirely within the discretion of the court, and not reviewable except when there has been a gross abuse of discretion.[33]

[31] § 672, supra. [32] § 653, supra.

[33] Lange v. Union P. R. Co. 126 Fed. 340, 62 C. C. A. 48. See on the subject generally of amendment of pleadings, chapter 8, Simkins, "A Federal Suit at Law," and 4 F. S. A. note. p. 572.

CHAPTER 23.

CONTINUANCES AND ADJOURNMENTS.

Sec.
690. Continuances—In General.
691. Continuances on Death of Party.
692. Survival of Action.
693. Continuance of Suit against Delinquent in Suit for Public Moneys.
694. Continuances of Suits under Postal Laws.
695. Continuances of Suits on Debentures.
696. Continuances of Suits under Tariff Laws.

§ 690. Continuances—In General. This matter conforms to state practice under § 914, R. S., there being no statutory provisions except those set out in the following sections, 691 to 696 inclusive: § 955, R. S., on death of a party; § 956, R. S., survival of action; § 957, R. S., suits against delinquents for public moneys; § 958, R. S., suits under postal laws; § 959, R. S., suits on debentures; § 960, R. S., suits under tariff laws.

If the judge is unable to act, the marshal or clerk may adjourn court under § 12, Judicial Code, quoted in our § 63, above.

If the office of judge becomes vacant, the clerk may continue pending proceedings under § 22 of the Judicial Code, quoted in our § 64, above.

Trials commenced in a district court may be concluded in a new term under § 8 of the Judicial Code, quoted in our § 65, above.

§ 691. Continuances on Death of Party.

§ 955, R. S., Comp. Stat. 1901, p. 697, Rose's Code, § 814, 4 F. S. A. 601. "When either of the parties, whether plaintiff or petitioner or defendant, in any suit in any court of the United States, dies before final judgment, the executor or administrator of such deceased party may, in case the cause of action survives by law, prosecute or defend any such suit

to final judgment. The defendant shall answer accordingly; and the court shall hear and determine the cause and render judgment for or against the executor or administrator, as the case may require. And if such executor or administrator, having been duly served with a scire facias from the office of the clerk of the court where the suit is depending, twenty days before hand, neglects or refuses to become party to the suit, the court may render judgment against the estate of the deceased party, in the same manner as if the executor or administrator had voluntarily made himself a party. The executor or administrator who becomes a party, as aforesaid, shall, upon motion to the court, be entitled to a continuance of the suit until the next term of said court."

§ 692. Survival of Action.

§ *956, R. S., Comp. Stat. 1901, p. 697, Rose's Code,* § *815, 4 F. S. A. 603.* "If there are two or more plaintiffs or defendants, in a suit where the cause of action survives to the plaintiff or against the surviving defendant, and one or more of them dies, the writ or action shall not be thereby abated; but, such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff against the surviving defendant."

§ 693. Continuance of Suit against Delinquent in Suit for Public Moneys.

§ *957, R. S., Comp. Stat. 1901, p. 698, Rose's Code,* § *1388, 2 F. S. A. 44.* "When suit is brought by the United States against any revenue officer or other person accountable for public money, who neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States, upon the adjustment of his account it shall be the duty of the court to grant judgment at the return term, upon motion, unless the defendant in open court (the United States attorney being present) makes and subscribes an oath that he is equitably entitled to credits which had been, previous to the commencement of the suit, submitted to the accounting officers of the Treasury, and rejected; specifying in the affidavit each particular claim so rejected, and that he cannot then safely come to trial. If the court, when such oath is made, subscribed, and filed, is thereupon satisfied, a continuance until the next succeeding term may be granted. Such continuance may also be granted when the suit is brought upon a bond or other sealed instrument, and the defendant pleads *non est factum,* or makes a motion to

the court, verifying such plea or motion by his oath, and the court thereupon requires the production of the original bond, contract, or other paper certified in the affidavit. And no continuance shall be granted except as herein provided."

§ 694. Continuances of Suits under Postal Laws.

§ 958, R. S., Comp. Stat. 1901, p. 698, Rose's Code, § 1409, 4 F. S. A. 603. "In suits arising under the postal laws the court shall proceed to trial, and render judgment at the return term; but whenever service of process is not made at least twenty days before the return day of such term the defendant is entitled to one continuance, if, on his statement, the court deems it expedient; and if he makes affidavit that he has a claim against the Postoffice Department, which has been submitted to and disallowed by the sixth auditor, specifying such claim in his affidavit, and that he could not be prepared for trial at such term for want of evidence, the court, if satisfied thereof, may grant a continuance until the next term."

§ 695. Continuances of Suits on Debentures.

§ 959, R. S., Comp. Stat. 1901, p. 699, Rose's Code, § 1394, 4 F. S. A. 604. "In all suits for the recovery of money upon debentures issued by the collectors of customs, under any act for the collection of duties, it shall be the duty of the court to grant judgment at the return term, unless the defendant, in open court, exhibits some plea, on oath, by which the court is satisfied that a continuance is necessary to the attainment of justice; in which case, and not otherwise, a continuance until the next term may be granted."

§ 696. Continuances of Suits under Tariff Laws.

§ 960, R. S., Comp. Stat. 1901, p. 699, Rose's Code, § 1395, 4 F. S. A. 604. "When suit is brought on any bond for the recovery of duties due to the United States, it shall be the duty of the court to grant judgment at the return term, upon motion, unless the defendant, in open court (the United States attorney being present), makes oath that an error has been committed in the liquidation of the duties demanded upon such bond, specifying the errors alleged to have been committed, and that the same have been notified in writing to the collector of the district before the said return term; whereupon a continuance may be granted until the next term, and no longer, if the court is satisfied that such continuance is necessary for the attainment of justice."

CHAPTER 24.

MISCELLANEOUS INCIDENTAL MATTERS.

Sec.
710. Consolidation of Cases.
711. Discovery—At Law.
712. Motion and Notice to Produce Books or Papers in Civil Suits under Customs-Revenue Laws.
713. Dismissal or Nonsuit.
714. Verification—Oaths—Acknowledgments.

§ 710. Consolidation of Cases.

§ *921, R. S., Comp. Stat. 1901, p. 685, Rose's Code,* § *823, 4 F. S. A. 587.* "When causes of a like nature or relative to the same question are pending before a court of the United States, or of any territory, the court may make such orders and rules concerning proceedings therein as may be conformable to the usages of courts for avoiding unnecessary costs or delay in the administration of justice, and may consolidate said causes when it appears reasonable to do so."

§ *920, R. S., Comp. Stat. 1901, p. 685, 4 F. S. A. 586, Rose's Code,* § *1384.* "Whenever two or more things belonging to the same person are seized for an alleged violation of the revenue laws, the whole must be included in one suit; and if separate actions are prosecuted in such cases, the court shall consolidate them."

§ 711. Discovery—At Law.

§ *724, R. S., Comp. Stat. 1901, p. 583, 3 F. S. A. 2.* "In the trial of actions at law, the courts of the United States may, on motion and due notice thereof, require the parties to produce books or writings in their possession or power which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceedings in

chancery. If a plaintiff fails to comply with such order, the court may, on motion, give like judgment for the defendant as in cases of nonsuit; and if a defendant fails to comply with such order, the court may, on motion, give judgment against him by default."

§ 712. Motion and Notice to Produce Books or Papers in Civil Suits under Customs-Revenue Laws.

§ 5, *Act June 22, 1874, ch. 391, Comp. St. 1901, p. 2019, 3 F. S. A. 42.* "That in all suits and proceedings other than criminal, arising under any of the revenue laws of the United States, the attorney representing the government, whenever, in his belief, any business book, invoice, or paper, belonging to or under control of the defendant or claimant, will tend to prove any allegation made by the United States, may make a written motion, particularly describing such book, invoice, or paper, and setting forth the allegation which he expects to prove; and thereupon the court in which suit or proceeding is pending may, at its discretion, issue a notice to the defendant or claimant to produce such book, invoice, or paper in court, at a day and hour to be specified in said notice, which, together with a copy of said motion, shall be served formally on the defendant or claimant by the United States marshal by delivering to him a certified copy thereof, or otherwise serving the same as original notices of suit in the same court are served; and if the defendant or claimant shall fail or refuse to produce such book, invoice, or paper in obedience to such notice, the allegations stated in the said motion shall be taken as confessed unless his failure or refusal to produce the same shall be explained to the satisfaction of the court. And if produced, the said attorney shall be permitted, under the direction of the court, to make examination (at which examination the defendant or claimant, or his agent, may be present) of such entries in said book, invoice, or paper as relate to or tend to prove the allegation aforesaid, and may offer the same in evidence on behalf of the United States. But the owner of said books and papers, his agent or attorney, shall have, subject to the order of the court, the custody of them, except pending their examination in court as aforesaid."

§ 713. Dismissal or Nonsuit. Except in suits lacking a ground of Federal jurisdiction, governed by § 37, Judicial Code,

set out in § 601, above, the dismissal by plaintiff, and the granting of a nonsuit, conform to state practice, there being no statutory provisions applicable.

Thus under a state law plaintiff in a Federal suit was permitted to dismiss, without prejudice, before final submission to the jury, although the judge had stated that he would sustain a motion to direct a verdict for defendant.

§ 714. Verification—Oaths—Acknowledgments.

§ *1778, R. S., Comp St. 1901, p. 1211, 4 F. S. A. 165.* "In all cases in which, under the laws of the United States, oaths or acknowledgments may now be taken or made before any justice of the peace of any state or territory, or in the District of Columbia, they may hereafter be also taken or made by or before any notary public duly appointed in any state, district, or territory, or any of the commissioners of the circuit courts, and, when certified under the hand and official seal of such notary or commissioner, shall have the same force and effect as if taken or made by or before such justice of the peace."

CHAPTER 25.

TRIAL—LAW ACTIONS.

Sec.
730. In General.
731. Method of Trial.
732. Cases to Which Provision Not Applicable.
733. Constitutional Jury—Twelve Men.
734. Qualifications and Exemptions—In General.
735. Same—Under Civil Rights Acts.
736. Same—Penalty for Exclusion.
737. Exempt after Serving Term in a Year.
738. Jurors—From Where Drawn.
739. Impaneling Jurors.
740. Venire—Issuance and Return.
741. Talesmen for Petit Juries.
742. Special Juries.
743. Challenges.
744. Trial by Judge.
745. Mode of Proof—Law Actions.
746. The Taking of Exceptions Does Not Conform to State Practice.
747. Time for Excepting to Rulings.
748. Conduct of the Trial.
749. Charge to the Jury—Instructions.

§ 730. In General. After the case is at issue, the next step is the production of proof which under § 861, R. S., must be in open court, except as otherwise specially provided. (§ 745, infra.)

There may be material testimony of witnesses who cannot be produced in open court, whose testimony should, if possible, be obtained by depositions. The grounds of taking these depositions are set out in §§ 863 and 866, R. S. The methods of taking such depositions are provided in §§ 863 to 870, R. S., inclusive, and may be according to state practice under the act of March 9, 1892, ch. 14, 27 Stat. at L. 7. The statutory provisions as to depositions apply alike to law and equity causes, and,

therefore, have not been treated separately for each kind of suit. The subject of depositions is treated in chapter 16, above.

Most of the statutory provisions relating to evidence and witnesses in like manner, apply alike to law and equity cases, and have been treated under the general headings "Evidence," in chapter 14, above, and "Witnesses," in chapter 15, above.

This chapter deals with the methods of trial, mode of proof, and conduct of the trial in law actions, including the provisions relating to the qualifications and exemptions of jurors, the selection of the jury, venire, talesmen, challenges, etc., and also respecting the charge to the jury.

The jury's verdict, motion for new trial, and bill of exceptions, might be traced under the heading of this chapter, "Trial-Law Actions," but these matters are more properly the end of the trial than of the trial itself, and are, therefore, treated in the following chapter, No. 26.

§ 731. Method of Trial.

Pt. § 566, R. S., Comp. Stat. 1901, p. 461, Rose's Code, §§ 911 and 1283, 4 F. S. A. 236. "The trial of issues of fact in the district courts, in all causes except in equity and cases of admiralty and maritime jurisdiction and except as otherwise provided in proceedings in bankruptcy, shall be by jury. . . ."

This right to a jury trial is guaranteed in common-law cases by the 7th Amendment to the United States Constitution, as follows:

"In suits at common-law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved. . . ."

§ 732. Cases to Which Provision Not Applicable. This provision in the 7th Amendment refers only to cases at common-law where the amount in controversy exceeds twenty dollars.

The clause does not prevent a waiver of trial by jury in common-law cases.[1]

The guaranty of trial by jury refers only to the Federal and not the state courts, and is a limitation on the powers of the Federal government.[2]

It applies to the District of Columbia and to the organized territories which have been brought under the Constitution, and to their legislative and judicial officers as also to a territorial governor, and to tribunals established under a provisional government in territory covered by the Constitution, but not to consular courts.[3]

The constitutional provision does not apply to equity cases,[4] nor to suits in admiralty.[5] § 566, R. S., especially excepts those kinds of causes. The constitutional amendment does not apply in suits against the United States in the court of claims.[6]

§ 733. Constitutional Jury—Twelve Men. Trial by jury means a common-law jury of twelve men, in the presence of and under the supervision of a judge, who instructs them as to the law.[7] A territorial law permitting a verdict by any number of jurors less than twelve is invalid.[8]

[1] Parsons v. Armour, 3 Pet. 425, 7 L. ed. 724.

[2] McBride v. Stradley, 103 Ind. 465, 2 N. E. 358; Seeley v. Bridgeport, 53 Conn. 1, 22 Atl. 1017; Livingston v. Moore, 7 Pet. 469, 8 L. ed. 751; Walker v. Sauvinet, 92 U. S. 92, 23 L. ed. 678; Baylis v. Travelers Ins. Co. 113 U. S. 321, 28 L. ed. 989, 5 Sup. Ct. Rep. 494.

[3] Capital G. Co. v. Hof, 174 U. S. 1, 43 L. ed. 873, 19 Sup. Ct. Rep. 580; Walker v. New Mexico R. R. Co. 165 U. S. 595, 41 L. ed. 837, 17 Sup. Ct. Rep. 421; Thompson v. Utah, 170 U. S. 349, 42 L. ed. 1061, 18 Sup. Ct. Rep. 620; Whallon v. Bancroft, 4 Minn. 109, Gil. 70; Claim of Reside, 9 Opinions of Atty. Gen. 200; Scott v. Billgerry, 40 Miss. 119; In re Ross, 140 U. S. 464, 35 L. ed. 581, 11 Sup. Ct. Rep. 897.

[4] Barton v. Barbour, 104 U. S. 133, 26 L. ed. 676; Woodworth v. Rogers, 3 Wood, & M. 135, Fed. Cas. No. 18,018, 2 Robb. Pat. Cas. 625; Buford v. Holley, 28 Fed. 680; Scott v. Bilgerry, 40 Miss. 119; Motte v. Bennett, 2 Fish, Pat. 642, Fed. Cas. No. 9,884.

[5] The Huntress, 2 Ware (Dav. 82) 89, Fed. Cas. No. 6,914; The James and Catherine, Bald. 544. Fed. Cas. No. 756; United States v. La Venzeance, 3 Dall. 297, 1 L. ed. 610.

[6] McElrath v. United States, 102 U. S. 440, 26 L. ed. 192; Torrey v. United States, 42 Fed. 207.

[7] Maxwell v. Dow, 176 U. S. 586, 44 L. ed. 599, 20 Sup. Ct. Rep. 448, 494; Thompson v. Utah, 170 U. S. 343, 42 L. ed. 1061, 18 Sup. Ct. Rep. 620.

[8] American P. Co. v. Fisher, 166 U. S. 467, 41 L. ed. 1079, 17 Sup. Ct. Rep. 618; Springville v. Thomas, 166 U. S. 708, 41 L. ed. 1172, 17 Sup.

§ 734. Qualifications and Exemptions—In General.

§ *275, Judicial Code,*[a] *36 Stat. at L. 1164, Comp. St. 1911, p. 239, 1912 Supp. F. S. A. v. 1, p. 245.* "Jurors to serve in the courts of the United States, in each state respectively, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such state may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned."

§ 735. Same—Under Civil Rights Acts.

§ *278, Judicial Code,*[b] *36 Stat. at L. 1165, Comp. St. 1911, p. 239, 1912 Supp. F. S. A. v. 1, p. 246.* "No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for services as grand or petit juror in any court of the United States on account of race, color, or previous condition of servitude."

§ 736. Same—Penalty for Exclusion.

Pt. § 4, Act March 1, 1875, 18 Stat. at L. 336, Comp. Stat. 1901, p. 1261, 1 F. S. A. 807. "Any officer or other person charged with any duty in the selection or summoning of jurors, who shall exclude or fail to summon any citizen, for the cause aforesaid, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than five thousand dollars."

§ 737. Exempt after Serving Term in a Year.

§ *286, Judicial Code,*[c] *36 Stat. at L. 1166, Comp. St. 1911, p. 241, 1912 Supp. F. S. A. v. 1, p. 247.* "No person shall serve as a petit juror in any district court more than one term in a year; and it shall be sufficient cause of chal-

Ct. Rep. 717; Kleinschmidt v. Dunphy, 1 Mont. 118; Hawaii v. Mankichi, 190 U. S. 197, 47 L. ed. 1016, 23 Sup. Ct. Rep. 787.

[a] Drawn from § 800, R. S. Rose's Code, § 1701, Foster's Fed. Prac. (4th ed.) pp. 1142, 1285, 1397, 1400, Comp. St. 1901, p. 623, 4 F. S. A. 737, which section is repealed by § 297, Judicial Code. In general, Steers et al. v. United States, 192 Fed. 1, 112 C. C. A. 423; United States v. Lewis, 192 Fed. 633.

[b] Re-enacting proviso of § 2 of Act of June 30, 1879, ch. 52, 21 Stat. at L. 43, Rose's Code, §§ 1703, 1704, 1721, Comp. St. 1901, p. 624, 4 F. S. A. 749.

[c] Drawn from § 812, R. S. Rose's Code, § 1713, Foster's Fed. Prac. (4th ed.) p. 1397, Comp. St. 1901, p. 627, 4 F. S. A. 744, which section is repealed by § 297, Judicial Code, and from Act of June 30, 1879, ch. 52, § 2, Comp. St. 1901, p. 624, 4 F. S. A. 749. In general, Morris v. United States, 161 Fed. 672, 88 C. C. A. 532.

lenge to any juror called to be sworn in any case that he has been summoned and attended said court as a juror at any term of said court held within one year prior to the time of such challenge."

§ 738. Jurors—From Where Drawn.

§ *277, Judicial Code,*[d] *36 Stat. at L. 1164, Comp. St. 1911, p. 239, 1912 Supp. F. S. A. v. 1, p. 245.* "Jurors shall be returned from such parts of the district, from time to time, as the court shall direct, so as to be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly burden the citizens of any part of the district with such service."

§ 739. Impaneling Jurors.

§ *276, Judicial Code,*[e] *36 Stat. at L. 1164, Comp. St. 1911, p. 239, 1912 Supp. F. S. A. v. 1, p. 245.* "All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in district having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk may belong, the clerk and said commissioner each to place one name in said box alternately, without reference to party affiliations, until the whole number required shall be placed therein."

§ 740. Venire—Issuance and Return.

§ *279, Judicial Code,*[f] *36 Stat. at L. 1165, Comp. St. 1911, p. 240, 1912 Supp. F. S. A. v. 1, p. 246.* "Writs

[d] Re-enacting § 802, R. S., Rose's Code, § 1723, Foster's Fed. Prac. (4th ed.) pp. 1396, 1401, Comp. St. 1901, p. 625, 4 F. S. A. 741, which section is repealed by § 297, Judicial Code. In general, May et al. v. United States, 199 Fed. 53, 117 C. C. A. 431.

[e] Re-enacting part of § 2 of Act of June 30, 1879, ch. 52, 21 Stat. at L. 43, Rose's Code, §§ 1703, 1704, 1714, 1721, Foster's Fed. Prac. (4th ed.) pp. 1400, 1405, Comp. St. 1901, p. 624, 4 F. S. A. 749.

[f] Down to the first period, re-enacting § 803, R. S., Rose's Code, § 1706,

of venire facias, when directed by the court, shall issue from the clerk's office, and shall be served and returned by the marshal in person, or by his deputy; or, in case the marshal or his deputy is not an indifferent person, or is interested in the event of the cause, by such fit person as may be specially appointed for that purpose by the court, who shall administer to him an oath that he will truly and impartially serve and return the writ. Any person named in such writ who resides elsewhere than at the place at which the court is held, shall be served by the marshal mailing a copy thereof to such person commanding him to attend as a juror at a time and place designated therein, which copy shall be registered and deposited in the postoffice addressed to such person at his usual postoffice address. And the receipt of the person so addressed for such registered copy shall be regarded as personal service of such writ upon such person, and no mileage shall be allowed for the service of such person. The postage and registry fee shall be paid by the marshal and allowed him in the settlement of his accounts."

§ 741. Talesmen for Petit Juries.

§ *280, Judicial Code,*[g] *36 Stat. at L. 1165, Comp. St. 1911, p. 240, 1912 Supp. F. S. A. v. 1, p. 246.* "When, from challenges or otherwise, there is not a petit jury to determine any civil or criminal cause, the marshal or his deputy shall, by order of the court in which such defect of jurors happens, return jurymen from the bystanders sufficient to complete the panel; and when the marshal or his deputy is disqualified as aforesaid, jurors may be so returned by such disinterested person as the court may appoint, and such person shall be sworn, as provided in the preceding section."

§ 742. Special Juries.

§ *281, Judicial Code,*[h] *36 Stat. at L. 1167, Comp. St. 1911, p. 240, 1912 Supp. F. S. A. v. 1, p. 246.* "When

Foster's Fed. Prac. (4th ed.) p. 1401, Comp. St. 1901, p. 625, 4 F. S. A. 742, which section is repealed by § 297, Judicial Code. The rest is new legislation. In general, Powers v. United States, 223 U. S. 303, 56 L. ed. 448, 32 Sup. Ct. Rep. 281.

[g] Re-enacting § 804, R. S., Rose's Code, § 1707, 4 F. S. A. 742, Comp. St. 1901, p. 625, which section is repealed by § 297, Judicial Code. In general, Agnew v. United States, 165 U. S. 36, 41 L. ed. 624, 17 Sup. Ct. Rep. 235.

[h] Re-enacting § 805, R. S., Rose's Code, § 1708, Comp. St. 1901, p. 626, 4

special juries are ordered in any district court, they shall be returned by the marshal in the same manner and form as is required in such cases by the laws of the several states."

§ 743. Challenges.

Pt. § 287, Judicial Code,[1] *36 Stat. at L. 1166, Comp. St. 1911, p. 241, 1912 Supp. F. S. A. v. 1, p. 248.* ". . . and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges under this section. All challenges, whether to the array or panel, or to individual jurors for cause or favor, shall be tried by the court without the aid of triers."

§ 744. Trial by Judge. Although §§ 649 and 700, R. S., specifically refer to trials by the circuit courts, and have been held to apply only to the circuit courts, and not to the district courts, nevertheless the new Judicial Code specifically provides for imposing the powers and duties of the circuit courts upon the district courts, thus allowing a waiver of jury trial and a trial by the judge. His findings of fact would be equivalent to a verdict of a jury under §§ 649, 700, 1011, R. S.

§ 291, Judicial Code,[1] *36 Stat. at L. 1167, Comp. St. 1911, p. 243, 1912 Supp. F. S. A. v. 1, p. 249.* "Wherever, in any law not embraced within this act, any reference is made to, or any power or duty is conferred or imposed upon, the circuit courts, such reference shall, upon the taking effect of this act, be deemed and held to refer to, and to confer such power and impose such duty upon, the district courts."

F. S. A. 743, which section is repealed by § 297, Judicial Code. In general, Metropolitan Railroad Co. v. Moore, 121 U. S. 558, 30 L. ed. 1022, 7 Sup. Ct. Rep. 1334.

[1] Drawn from § 819, R. S., Rose's Code, § 1715, Foster's Fed. Prac. (4th ed.) pp. 1400, 1404, 1431, Comp. St. 1901, p. 629, 4 F. S. A. 745, which is repealed by § 297, Judicial Code. In general, Emanuel v. United States, 196 Fed. 317, 116 C. C. A. 137.

[1] New legislation. In general, Ex parte United States, 226 U. S. 420, 57 L. ed. 281, 33 Sup. Ct. Rep. 170.

§ *649, R. S., Comp. Stat. 1901, p. 525, 4 F. S. A. 393, Rose's Code, § 914.* "Issues of fact in civil cases in any circuit court may be tried and determined by the court, without the intervention of a jury, whenever the parties, or their attorneys of record, file with the clerk a stipulation in writing waiving a jury. The finding of the court upon the facts, which may be either general or special, shall have the same effect as the verdict of a jury."

§ *700, R. S., Comp. Stat. 1901, p. 570, 4 F. S. A. 450, Rose's Code, § 2082.* "When an issue of fact in any civil cause in a circuit court is tried and determined by the court without the intervention of a jury, according to section six hundred and forty-nine, the rulings of the court in the progress of the trial of the cause, if excepted to at the time, and duly presented by a bill of exceptions, may be reviewed by the Supreme Court upon a writ of error or upon appeal; and when the finding is special the review may extend to the determination of the sufficiency of the facts found to support the judgment."

§ 745. Mode of Proof—Law Actions.

§ *861, R. S., Comp. Stat. 1901, p. 661, 3 F. S. A. 7, Rose's Code, § 917.* "The mode of proof in the trial of actions at common law shall be by oral testimony and by examination of witnesses in open court, except as hereinafter provided."

The statute above quoted governs the practice of procuring testimony to be used in the courts of the United States, and excludes anything in the state practice to the contrary.[9]

Open court is in the presence of the court and jury at the trial.[10]

The exceptions mentioned are provisions respecting depositions, and letters rogatory set out in chapter 16, above, transcripts and copies of official records and other documentary evidence set out in chapter 14, above.

§ 746. The Taking of Exceptions Does Not Conform to State Practice. Appellate procedure in Federal courts neces-

[9] Ex parte Fisk, 113 U. S. 713, 28 L. ed. 1117, 5 Sup. Ct. Rep. 724; Union Pacific Ry. Co. v. Botsford, 141 U. S. 250, 35 L. ed. 734, 11 Sup. Ct. Rep. 1000.

[10] Beardsley v. Littell, 14 Blatch. 102, Fed. Cas. No. 1,185.

sarily must be governed by their own rules, as this is a matter which has to do with the organization of the judicial system.

§ 953, R. S., quoted § 765, infra, is the only statutory provision as to preserving exceptions except that § 700, R. S., providing for trial of cases without the intervention of a jury, provides that "the ruling of the court in the progress of the trial of the cause if excepted at the time, and duly presented by a bill of exceptions, may be reviewed," etc.

In this last-mentioned section the Federal courts act independently of state statutes or state practice.[11] Even an agreement of the parties cannot authorize the Federal court to depart from the Federal rules in this respect.[12]

§ 953, R. S., quoted § 765, infra, is the only regulation as to bills of exceptions in Federal courts.[13]

§ 747. Time for Excepting to Rulings. § 953 does not limit the time within which exceptions shall be filed or allowed,[14] nor the time to make, file, and serve a bill of exceptions.[15]

Under § 700, R. S., the ruling must be "excepted to at the time." It must show from the record that the party objected at the trial to the rulings and wished the exceptions noted and reduced to a bill, and that the party persisted in them.[16] The time for presentation and allowance of the bill of exceptions may be extended in the discretion of the court.[17]

§ 748. Conduct of the Trial. The conduct of the trial is a matter of personal administration by the judge, and does not, therefore, conform to the state laws or rules on that subject.

11 United States v. King, 7 How. 833, 12 L. ed. 934; Shipman v. Ohio Coal Exch. 70 Fed. 652, 17 C. C. A. 313; Simkins' "A Federal Suit at Law," pp. 96–7.

12 Richmond v. Smith, 15 Wall. 429, 21 L. ed. 200; Kelsey v. Forsyth, 21 How. 85, 16 L. ed. 32.

13 Chateaugay Ore, etc., Co. 128 U. S. 544, 32 L. ed. 508, 9 Sup. Ct. Rep. 150; Duncan v. Landis, 45 C. C. A. 666, 106 Fed. 844.

14 N. Y., etc., R. Co. v. Hyde, 5 C. C. A. 461, 56 Fed. 188.

15 Talbot v. Press Pub. Co. 80 Fed. 567.

16 United States v. Jarvis, 3 Woodb. 217, 26 Fed. Cas. No. 15,469. Simkins' "A Federal Suit at Law," pp. 96–98.

17 Dalton v. Hazelet, 182 Fed. 561, 105 C. C. A. 99.

Thus the "scintilla of evidence rule" does not apply,[18] but the judge, with due deference to the province of the jury to pass upon the weight and credibility of the evidence,[19] may withdraw the case from the jury and instruct a verdict.[20]

Likewise the judge, in his discretion, may permit the jury to separate after the charge is given,[21] or refuse to ask a special verdict authorized by state law,[22] or may comment on the evidence though forbidden by state law.[23]

§ 749. Charge to the Jury—Instructions. The charge to the jury is within the judge's personal administration of the case.

As stated in the preceding section, he may comment on the evidence and express an opinion as to the facts, provided he separates the law from the facts in his charge, giving the jury to understand that the determination of the facts is their own province.[24]

The refusal to give special charges after argument was begun was held not error under a rule that special charges should be requested before argument.[25]

The instructions need not be in writing even though the state law so requires,[26] nor need the judge permit the instructions to be taken by the jury upon retiring if that rule be not expressly adopted from the state practice.[27]

18 Oyanne v. Illinois C. R. Co. 151 Fed. 900.

19 Wichita R. & L. Co. v. Dulaney, 159 Fed. 417, 86 C. C. A. 397; Newburger Cotton Co. v. York Cotton Mills, 152 Fed. 398, 81 C. C. A. 524.

20 Teis v. Smuggler Min. Co. 158 Fed. 261, 85 C. C. A. 478, 15 L.R.A. (N.S.) 893; McGuire v. Blount, 199 U. S. 142, 50 L. ed. 125, 26 Sup. Ct. Rep. 1; cases cited Simkins' "A Suit at Law," pp. 68–9, note 4 F. S. A. 2d col. p. 391.

21 Liverpool, etc., Co. v. N. & M. Friedman Co. 133 Fed. 713, 66 C. C. A. 543; Nudd v. Burrows, 91 U. S. 426, 23 L. ed. 286.

22 United States Mutual Acc. Ass. v. Barry, 131 U. S. 100, 33 L. ed. 60, 9 Sup. Ct. Rep. 755.

23 Nudd v. Burrows, 91 U. S. 426, 23 L. ed. 290; Lincoln v. Power, 151 U. S. 436, 38 L. ed. 224, 14 Sup. Ct. Rep. 387.

24 Union P. R. Co. v. Thomas, 152 Fed. 371, 81 C. C. A. 491.

25 Atchison T. & S. F. Ry. Co. v. Hamble, 177 Fed. 644, 101 C. C. A. 270.

26 Lincoln v. Power, 151 U. S. 436, 38 L. ed. 224, 14 Sup. Ct. Rep. 387.

27 Nudd v. Burrows, 91 U. S. 441, 23 L. ed. 290; Western Union Tel. Co. v. Burgess, 47 C. C. A. 168, 108 Fed. 26.

CHAPTER 26.

VERDICT—MOTION FOR NEW TRIAL—BILL OF EXCEPTIONS.

Sec.
760. Special Verdict.
761. Form and Effect of General Verdict.
762. Amendment of Verdict.
763. Judgment *Non Obstante Veredicto.*
764. Motion for New Trial.
765. Bill of Exceptions—Authentication and Signing.
766. Contents of Bill of Exceptions—Under C. C. A. Rule 10, Sup. Ct. Rule 4.

§ 760. Special Verdict. The Federal courts are not bound by requirements of state statutes requiring special verdicts on the request of either party.[1]

§ 761. Form and Effect of General Verdict. The form and effect of the verdict under the conformity act, § 914, R. S., are matters in which the Federal courts will follow the state practice.[2]

§ 762. Amendment of Verdict. Under § 954, R. S., providing for amendment of proceedings, etc., in Federal courts, a verdict may be amended to conform to technical requirements.[3]

Amendments should usually be made before the jury separates,[4] but may be so amended during the term by reference to the judge's notes or on other satisfactory evidence.[5]

[1] U. S. Mutual Acc. Ass. v. Barry, 131 U. S. 119, 33 L. ed. 60, 9 Sup. Ct. Rep. 755.
[2] Glenn v. Sumner, 132 U. S. 156, 33 L. ed. 301, 10 Sup. Ct. Rep. 41, and other cases cited, 4 F. S. A. 2d Col. p. 574, and Simkins, "A Federal Suit at Law," p. 120.
[3] Gay v. Joplin, 13 Fed. 650, 4 McCrary, 459. See note 4 F. S. A. 1st col. p. 600.
[4] Pressed Steel Car Co. v. Steel Car Forge Co. 149 Fed. 182, 79 C. C. A. 130.
[5] Miller v. Steele, 153 Fed. 715, 82 C. C. A. 572; Elliott v. Gilmore, 145 Fed. 965.

§ 763. Judgment Non Obstante Veredicto. A judgment *non obstante veredicto,* to wit, a judgment in favor of the plaintiff notwithstanding a verdict for defendant, will usually follow the state method.[6]

§ 764. Motion for New Trial.

§ 269, Judicial Code,[a] *36 Stat. at L. 1163, Comp. St. 1911, p. 237, 1912 Supp. F. S. A. v. 1, p. 243.* "All the said courts shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in courts of law."

This is a mattter of discretion with the trial judge, and not subject to review.[7]

And a new trial is not necessary for purposes of obtaining a review by the appellate court.[8]

State statutes may add to the power of the court to grant new trials, as in case of allowing two new trials in ejectment suits.[9]

§ 765. Bill of Exceptions—Authentication and Signing.

§ 953, R. S., Comp. Stat. 1901, p. 696, 4 F. S. A. 594–5, Rose's Code, § 1932. "That a bill of exceptions allowed in any cause shall be deemed sufficiently authenticated if signed by the judge of the court in which the cause is tried, or by the presiding judge thereof if more than one judge sat at the trial cause, without any seal of the court or judge annexed thereto. And in case the judge before whom the cause has heretofore been or may hereafter be tried is, by reason of death, sickness, or other disability, unable to hear and pass upon the motion for a new trial and allow and sign said bill of exceptions, then the judge who succeeds such trial judge,

[6] Smith v. Jones, 181 Fed. 820, 104 C. C. A. 329; Simkins, "A Federal Suit at Law," p. 124.

[7] Newcomb v. Wood, 97 U. S. 583, 24 L. ed. 1086, and other cases cited, 4 F. S. A. 1st col. p. 575. See also 4 F. S. A. 549, 550.

[8] Aaron v. United States, 155 Fed. 833, 84 C. C. A. 67; Boatmen's Bank v. Trover Co. 181 Fed. 804, 104 C. C. A. 314; Owen v. Giles, 157 Fed. 825, 85 C. C. A. 189.

[9] Smale v. Mitchell, 143 U. S. 108, 36 L. ed. 92, 12 Sup. Ct. Rep. 353. See also Clark v. Sohier, 1 Woodb. & M. 368, 4 Fed. Cas. No. 2,835.

[a] Re-enacting § 726, R. S., Rose's Code, § 923, Foster's Fed. Prac. (4th ed.) p. 1306, Comp. St. 1901, p. 584, 4 F. S. A. 549, which section is expressly repealed by § 297, Judicial Code. In general, Sanborn v. Bay, 194 Fed. 37, 114 C. C. A. 57.

or any other judge of the court in which the cause was tried, holding such court thereafter, if the evidence in such cause has been or is taken in stenographic notes, or if the said judge is satisfied by any other means that he can pass upon such motion and allow a true bill of exceptions, shall pass upon said motion and allow and sign such bill of exceptions; and his ruling upon such motion and allowance and signing of such bill of exceptions shall be as valid as if such ruling and allowance and signing of such bill of exceptions had been made by the judge before whom such cause was tried; but in case said judge is satisfied that owing to the fact that he did not preside at the trial, or for any other cause, that he cannot fairly pass upon said motion, and allow and sign said bill of exceptions, then he may in his discretion grant a new trial to the party moving therefor."

§ 766. Contents of Bill of Exceptions—Under C. C. A. Rule 10, Sup. Ct. Rule 4.

C. C. A. Rule 10. All circuits.

"1. Judges of the district courts shall not allow any bill of exceptions which shall contain the charge of the court at large to the jury in trials at common law upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts; and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court."

In the third circuit the following is added:

"1. Exceptions to the charge or to the judge's action upon the requests for instruction shall be taken immediately on the conclusion of the charge before the jury retire, shall be specified in writing or dictated to the stenographer, and shall be specific and not general."

"2. Exceptions to the admission or rejection of evidence shall be specific and not general, and the bill of exceptions to such admission or rejection shall contain only so much of the evidence admitted or offered and rejected as is necessary for the presentation and decision of the questions saved for review. Unless there be saved a question which requires the consideration of all the evidence, a bill of exceptions containing all of it shall not be allowed."

In the fourth circuit the following is added:

"2. Only so much of the evidence as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and such evidence as is embraced therein, shall be set forth in condensed and narrative form, save as a proper understanding of the questions presented may require that parts of it be set forth otherwise."

In the sixth circuit the following is the rule:

"1. The assignments of error required by rule 11 shall be filed at or before the settling of the bill of exceptions. The evidence in the bill of exceptions shall not be set forth in full, but shall be stated in simple and condensed form, all parts not essential to the decision of some one of the questions presented by the assignments of error being omitted, and the testimony of witnesses being stated only in narrative form, save that, if either party desires it and the judge so directs, any part of the testimony shall be reproduced in the exact words of the witness."

"2. No general exception to the whole or any charge to a jury on trials at law shall be allowed in any bill of exceptions. Exceptions to charge, in order to be allowed in a bill of exceptions, must be taken before the jury retires and must state distinctly the several matters of law to which exception is taken. In cases where exception is taken to part of a charge, and such exception may be affected by other parts or by the charge as a whole, the entire charge shall be included in the bill of exceptions."

In the seventh circuit the following is added:

"2. A bill of exceptions shall contain of the evidence only such a statement as is necessary for the presentation and decision of questions saved for review, and unless there be saved a question which requires the consideration of all the evidence, a bill of exceptions containing all the evidence shall not be allowed."

"3. No document shall be copied more than once in a bill of exceptions or in a transcript of the record of the case, but instead there shall be inserted a reference to the one copy set out. A motion for a new trial, and orders and entries relating thereto, shall not be set out in the transcript unless required by written precipe, of which a copy shall also be set out."

"4. The cost of unnecessary matter in the bill of exceptions

or transcript or in the printed record shall not be recovered of the appellee or defendant in error, and in its discretion the court will in case of dispute appoint a referee to determine and report what was necessary therein, and will tax the cost of the reference as shall be just."

Supreme Court Rule 4 as to bill of exceptions consists of two paragraphs, No. 1 of which is the same in substance as No. 1 of rule 10, C. C. A., above quoted; and No. 2 of which is identical with 2 of the fourth circuit, above quoted.

CHAPTER 27.

JUDGMENTS AND EXECUTION—LAW ACTIONS.

Sec.

780. Judgments—In General.
781. Executions—In General.
782. Judgments at Law Generally Conform to State Practice.
783. Interest on Judgments—Rate, Allowance of, Levy for,—Conforms to State Law.
784. Judgments—Kind of Money Payable in Suits for Duties.
785. Record of Judgment as Required by State Laws.
786. Indexes of Judgment Records.
787. Lien of Judgment—Manner and Extent—Conform to State Laws.
788. Lien of Judgment or Execution Not Devested by Creation of a New District or Division, nor by the Division or Transfer of Territory.
789. Amendments of Judgment.
790. Vacation of Judgment Governed by Federal Decisions.
791. Executions in Common-Law Causes Conform to State Statutes by Rule of Court.
792. Executions Not in Issue against Revenue Officers for Moneys Paid into Treasury on Probable Cause.
793. Execution—Stay Pending Motion for New Trial—Vacation of Judgment by Granting New Trial.
794. Execution—Stay for One Term Where State Law Allows Such Stay.
795. Executions may Run and be Executed in Any Part of a State, and on Behalf of the United States in any Other State or Territory.
796. Execution—Imprisonment for Debt—Modifications of State Law Adopted.
797. Execution—Discharge from Arrest or Imprisonment in Civil Actions Conform to State Laws.
798. Execution—Imprisonment for Debt in Government Suits—Discharge of Poor Debtor.
799. Same—Discharge by President When Secretary of Treasury Not Authorized.
800. Execution—Sale of Real Estate or Personal Property—Place of Sale.
801. Execution—Sale of Real Estate—Publication of Notice.
802. Execution—Sale of Real Estate—Marshal's Successor to Continue Proceedings.
803. Execution—Sale of Real Estate in Government Suits—Purchase by Government.
804. Execution—Sale of Personal Property—Appraisal under § 993, R. S., in Same Manner as Required by State Law.

§ 780. Judgments—In General. Judgments in law actions may conform by general rule to state laws under the "conformity act," § 914, R. S. Judgments by default are authorized by § 918, R. S., and defaults in suits by government on bonds, § 961, R. S.,[1] and amendments by § 954, R. S.[2]

The allowance of interest[3] as provided by state laws is permitted by § 966, R. S., interest or bonds for duties is provided by § 963, R. S., and interest on customs debentures by § 965, R. S.

The kind of money payable in suits for duties is provided by § 962, R. S.[4]

The recording, docketing, and indexing of judgments conform under § 1, act of August 1, 1888, ch. 729.[5]

The clerks of the United States courts are required to keep indexes of such judgments by § 2 of the act of Aug. 1, 1888, ch. 729.[6]

The manner, effect, and extent of the lien of judgments conform to state laws under § 1 of the act of Aug. 1, 1888, ch. 729, and when they shall cease to be liens by § 967, R. S.[7] The lien of a judgment on execution by change of boundaries is preserved by § 60, Judicial Code.[8]

Amendments for defect in form are permitted under § 954, R. S., regardless of state statute.[9]

Judgments may be vacated within the term, but not after term, except by an independent suit in equity for equitable cause.[10]

§ 781. Executions—In General. Executions on judgments in law actions may conform by general rule to state statutes under § 916, R. S.[11]

Executions are not to issue against revenue officers for moneys paid into the Treasury on probable cause under § 989, R. S.[12]

Executions may be stayed pending motion for new trial under § 987, R. S.[13] And where state allows stay for one term or more,

1 § 782, infra. Judgments by default, see § 672, supra.
2 § 789, infra. 3 § 783, infra. 4 § 784, infra. 5 § 785, infra.
6 § 786, infra. 7 § 787, infra. 8 § 788, infra. 9 § 789, infra.
10 § 790, infra. 11 § 791, infra. 12 § 792, infra. 13 § 793, infra.

there may be stay for one term in the Federal court under § 988, R. S.[14]

Executions may run and be executed in any part of a state under § 985, R. S., and on judgment in favor of the United States may run in every state and territory under § 986, R. S.[15]

State laws regarding abolishment of imprisonment for debt are effective under § 990, R. S.,[16] and for the discharge of a person from arrest or imprisonment in civil cases by § 991, R. S.[17]

A poor debtor may be discharged from imprisonment for debt in government suits by the Secretary of the Treasury under § 3471, R. S.,[18] or by the President under § 3472, R. S.,[19] when the Secretary is not authorized.

The place of sale of real or personal property is governed by §§ 1 and 2, act March 3, 1893, chapter 225,[20] and the publication of notice of sale of real estate by § 3 of the same act.[21] Proceedings for sale of real estate are not interrupted by a vacancy in the marshal's office but are continued by his successor under § 994, R. S.[22]

The government may be a purchaser in execution sales of real estate in government suits under § 3470, R. S.[23]

Appraisal of personal property sold on execution may conform under § 993, R. S., to state laws.[24]

§ 782. Judgments at Law Generally Conform to State Practice.

> § *914, R. S., Comp. Stat. 1901, p. 684, 4 F. S. A. 563, Rose's Code, § 900.* "The practice, . . . forms, and modes of proceeding in civil causes . . . shall conform, as near as may be, to the practice, . . . forms, and modes of proceeding existing at the time in like causes in the courts of record of the state within which such . . . district courts are held, any rule of court to the contrary notwithstanding."

Judgments by default generally conform to state statutes though the district courts may provide for same by rule under § 918, R. S. This subject is treated in § 672, supra.

[14] § 794, infra. [15] § 795, infra. [16] § 796, infra. [17] § 797, infra.
[18] § 798, infra. [19] § 799, infra. [20] § 800, infra. [21] § 801, infra.
[22] § 802, infra. [23] § 803, infra. [24] § 804,infra.

§ 783. Interest on Judgments—Rate, Allowance of, Levy for,—Conforms to State Law.

§ 966, R. S., Comp. Stat. 1901, p. 700, 4 F. S. A. 2. "Interest shall be allowed on all judgments in civil causes, recovered in a circuit or district court, and may be levied by the marshal under process of execution issued thereon, in all cases where, by the law of the state in which such court is held, interest may be levied under process of execution on judgments recovered in the courts of such state; and it shall be calculated from the date of the judgment, at such rate as is allowed by law on judgments recovered in the courts of such state."

Interest on bonds for duties.

§ 963, R. S., Comp. Stat. 1901, p. 700, 2 F. S. A. 726, Rose's Code, § 1397. "Upon all bonds, on which suits are brought for the recovery of duties, interest shall be allowed, at the rate of six per centum a year, from the time when said bonds became due."

Interest on customs debentures.

§ 965, R. S., Comp. Stat. 1901, p. 700, 2 F. S. A. 726, Rose's Code, § 1398. "In suits upon debentures issued by the collectors of the customs under any act for the collection of duties, interest shall be allowed, at the rate of six per centum per annum, from the time when such debenture became due and payable."

§ 784. Judgments—Kind of Money Payable in Suits for Duties.

§ 962, R. S., Comp. Stat. 1901, p. 699, 2 F. S. A. 726, Rose's Code, § 1396. "In all suits by the United States for the recovery of duties upon imports, or of penalties for the nonpayment thereof, the judgment shall recite that it is rendered for duties, and such judgment, with interest thereon, and costs, shall be payable in the coin by law receivable for duties; and the execution issued thereon shall set forth that the recovery is for duties, and shall require the marshal to satisfy the same in the coin by law receivable for duties; and in case of levy upon and sale of the property of the judgment debtor, the marshal shall refuse payment from any purchaser at such sale in any other money than that specified in the execution."

§ 785. Record of Judgment as Required by State Laws.

Pt. § 1, Act Aug 1, 1888, ch. 729, 25 Stat. at L. 357, Comp. Stat. 1901, p. 701, 4 F. S. A. 5, Rose's Code, § 1861. ". . . That whenever the laws of any state require a judgment or decree of a state court to be registered, recorded, docketed, indexed, or any other thing to be done, in a particular manner, or in a certain office or county, or parish in the state of Louisiana before a lien shall attach, this act shall be applicable therein whenever and only whenever the laws of such state shall authorize the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the state."

§ 3 Act August 1, 1888, ch. 729, 4 F. S. A. 5, Rose's Code, § 1863, obviating the necessity of filing a transcript of a judgment in the state office of the county where the clerk of the United States has a permanent office is repealed by Act August 17, 1912, ch. 300, 37 Stat. at L. 311.

§ 786. Indexes of Judgment Records.

§ 2, Act Aug. 1, 1888, ch. 729, 25 Stat. at L. 357, Comp. Stat. 1901, p. 701, 4 F. S. A. 5. "That the clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public."

§ 787. Lien of Judgment—Manner and Extent—Conform to State Laws.

Pt. § 1, Act Aug. 1, 1888, ch. 729, 25 Stat. at L. 357, Comp. Stat. 1901, p. 701, 4 F. S. A. 5. "That judgments and decrees rendered in a circuit or district court of the United States within any state shall be liens on property throughout such state, in the same manner, and to the same extent, and under the same conditions only, as if such judgments and decrees had been rendered by a court of general jurisdiction of such state: . . . ."

§ 967, R. S., Comp. Stat. 1901, p. 700, 4 F. S. A. 4, Rose's Code, § 1862. "Judgments and decrees rendered in

a circuit or district court, within any state, shall cease to be liens on real estate or chattels real, in the same manner and at like periods as judgments and decrees of the courts of such state cease, by law, to be liens thereon."

§ 788. Lien of Judgment or Execution Not Devested by Creation of a New District or Division, nor by the Division or Transfer of Territory. By § 60, Judicial Code, quoted in our § 170, supra, and in the Appendix, it is provided that the lien of a judgment or execution, etc., shall not be devested by a change of boundaries of any territory, and that a certified copy thereof may be filed in the proper court of the division or district in which the property is located after such transfer, and have the same effect as an original.

§ 789. Amendments of Judgment.

§ 954, R. S., Comp. Stat. 1901, p. 696, 4 F. S. A. 596, Rose's Code, § 813. "No . . . judgment . . . in civil causes, in any court of the United States, shall be abated, arrested, quashed, or reversed for any defect or want of form, . . . and such court shall amend every such defect and want of form . . . upon such conditions as it shall, in its discretion and by its rules, prescribe."

This section does not permit amendments in judgments except as to defects or want of form.[25]

The judgment may be amended, modified, or set aside during the term of entry.[26]

§ 790. Vacation of Judgment Governed by Federal Decisions. The inherent power to vacate a judgment during the term in which it is entered is settled beyond controversy.[27] But a judgment cannot be changed or substantially modified after the term has expired regardless of state law or practice.[28] There may, however, be an independent equity suit to relieve of a judgment at law where there is fraud or other equitable grounds.[29]

[25] Albers v. Whitney, 1 Story, 310, 1 Fed. Cas. No. 137.
[26] Southern P. R. Co. v. Kelly, 187 Fed. 939, 109 C. C. A. 659.
[27] Ibid.
[28] Bronson v. Schulten, 104 U. S. 410, 26 L. ed. 797.
[29] Johnson v. Waters, 111 U. S. 667, 28 L. ed. 556, 4 Sup. Ct. Rep. 619.

§ 791. Executions in Common-Law Causes Conform to State Statutes by Rule of Court.

§ *916, R. S., Comp. Stat. 1901, p. 684, 3 F. S. A. 44, also 4 F. S. A. 580, Rose's Code, § 925.* "The party recovering a judgment in any common-law cause in any circuit or district court shall be entitled to similar remedies upon the same, by execution or otherwise, to reach the property of the judgment debtor, as are now provided in like causes by the laws of the state in which such court is held, or by any such laws hereafter enacted which may be adopted by general rules of such circuit or district court; and such courts may, from time to time, by general rules, adopt such state laws as may hereafter be in force in such state in relation to remedies upon judgments, as aforesaid, by execution or otherwise."

"When parties seek attachments, garnishments, executions, provisional remedies of various kinds, in the courts of the United States, it is not the habit of counsel or of the court to search the statutes of a quarter of a century ago, and to conform the proceedings of the Federal courts to those then in force in the courts of the several states, but they adopt and use remedies prescribed by their state statutes in force at the time they act. A general and uniform practice becomes a general and established rule of the court, and in the absence of convincing evidence to the contrary the presumption in the appellate court is that the remedial statutes in force in the states at the time when proceedings under them were taken in the Federal courts had been adopted by those courts, either by written rule or by general practice." [30]

§ 792. Executions Not to Issue against Revenue Officers for Moneys Paid into Treasury on Probable Cause.

§ *989, R. S., Comp. Stat. 1901, p. 708, 3 F. S. A. 46, Rose's Code, § 1868.* "When a recovery is had in any suit or proceeding against a collector or other officer of the revenue for any act done by him, or for the recovery of any money exacted by or paid into the Treasury, in the performance of his official duty, and the court certifies that there was probable cause for the act done by the collector or other officer,

30 Logan v. Goodwin, 104 Fed. 490, 43 C. C. A. 658.

or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the government, no execution shall issue against such collector or other officer, but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury."

§ 793. Execution—Stay Pending Motion for New Trial—Vacation of Judgment by Granting New Trial.

§ *987, R. S., Comp. Stat. 1901, p. 708, 3 F. S. A. 45, Rose's Code, §§ 924, 1866.* "When a circuit court enters judgment in a civil action, either upon a verdict or on a finding of the court upon the facts, in cases where such finding is allowed, execution may, on motion of either party, at the discretion of the court, and on such conditions for the security of the adverse party as it may judge proper, be stayed forty-two days from the time of entering judgment, to give time to file in the clerk's office of said court a petition for a new trial. If such petition is filed within said term of forty-two days, with a certificate thereon from any judge of such court that he allows it to be filed, which certificate he may make or refuse at his discretion, execution shall, of course, be further stayed to the next session of said court. If a new trial be granted, the former judgment shall be thereby rendered void."

§ 794. Execution—Stay for One Term Where State Law Allows Such Stays.

§ *988, R. S., Comp. Stat. 1901, p. 708, 3 F. S. A. 46, Rose's Code, § 1867.* "(When judgment debtor entitled to a continuance of one term.) In any state where judgments are liens upon the property of the defendant, and where, by the laws of such state, defendants are entitled, in the courts thereof, to a stay of execution for one term or more, defendants in actions in courts of the United States, held therein, shall be entitled to a stay of execution for one term."

§ 795. Executions may Run and be Executed in any Part of a State, and on Behalf of the United States in Any Other State or Territory.

§ *985, R. S., Comp. Stat. 1901, p. 707, 3 F. S. A. 44, Rose's Code, § 1865.* "All writs of execution upon judg-

ments or decrees obtained in a circuit or district court, in any state which is divided into two or more districts, may run and be executed in any part of such state; but shall be issued from, and made returnable to, the court wherein the judgment was obtained."

§ 986, R. S., Comp. Stat. 1901, p. 707, 3 F. S. A. 45, Rose's Code, § 1865. "All writs of execution upon judgments obtained for the use of the United States, in any court thereof, in one state, may run and be executed in any other state, or in any territory, but shall be issued from, and made returnable to, the court wherein the judgment was obtained."

§ 796. Execution—Imprisonment for Debt—Modifications of State Law Adopted.

§ 990, R. S., Comp. Stat. 1901, p. 709, 3 F. S. A. 48, Rose's Code, § 1558. "No person shall be imprisoned for debt in any state, on process issuing from a court of the United States, where, by the laws of such state, imprisonment for debt has been or shall be abolished. And all modifications, conditions, and restrictions, upon imprisonment for debt, provided by the laws of any state, shall be applicable to the process issuing from the courts of the United States to be executed therein; and the same course of proceedings shall be adopted therein as may be adopted in the courts of such state."

§ 797. Execution—Discharge from Arrest or Imprisonment in Civil Actions Conform to State Laws.

§ 991, R. S., Comp. Stat. 1901, p. 709, 3 F. S. A. 50, Rose's Code, § 1559. "When any person is arrested or imprisoned in any state, on mesne process or execution issued from any court of the United States, in any civil action, he shall be entitled to discharge from such arrest or imprisonment in the same manner as if he were so arrested and imprisoned on like process from the courts of such state. The same oath may be taken, and the same notice thereof shall be required, as may be provided by the laws of such state, and the same course of proceedings shall be adopted as may be adopted in the courts thereof. But all such proceedings shall be had before one of the commissioners of the circuit court for the district where the defendant is so held."

§ 798. Execution—Imprisonment for Debt in Government Suits—Discharge of Poor Debtor under § 3471, R. S.

§ 3471, R. S., Comp. Stat. 1901, p. 2318, 3 F. S. A. 52. "Any person imprisoned upon execution issuing from any court of the United States, for a debt due to the United States, which he is unable to pay, may, at any time after commitment, make application, in writing, to the Secretary of the Treasury, stating the circumstances of his case and his inability to discharge the debt; and thereupon the Secretary may make, or require to be made, an examination and inquiry into the circumstances of the debtor, by the oath of the debtor, which the Secretary, or any other person by him specially appointed, is authorized to administer, or otherwise, as the Secretary shall deem necessary and expedient, to ascertain the truth; and upon proof made to his satisfaction, that the debtor is unable to pay the debt for which he is imprisoned, and that he has not concealed or made any conveyance of his estate, in trust, for himself, or with an intent to defraud the United States, or to deprive them of their legal priority, the Secretary is authorized to receive from such debtor any deed, assignment, or conveyance of his real or personal estate, or any collateral security, to the use of the United States. Upon a compliance by the debtor with such terms and conditions as the Secretary may judge reasonable and proper, the Secretary must issue his order, under his hand, to the keeper of the prison, directing him to discharge the debtor from his imprisonment under such execution. The debtor shall not be liable to be imprisoned again for the debt; but the judgment shall remain in force, and may be satisfied out of any estate which may then, or at any time afterward, belong to the debtor. The benefit of this section shall not be extended to any person imprisoned for any fine, forfeiture, or penalty, incurred by a breach of any law of the United States, or for moneys had and received by any officer, agent, or other person, for their use; nor shall its provisions extend to any claim arising under the postal laws."

§ 799. Same—Discharge by President When Secretary of Treasury Not Authorized.

§ 3472, R. S., Comp. Stat. 1901, p. 2319, 3 F. S. A. 53. "Whenever any person is imprisoned upon execution for a debt due to the United States, which he is unable to pay, and

his case is such as does not authorize his discharge by the Secretary of the Treasury, under the preceding section, he may make application to the President, who, upon proof made to his satisfaction that the debtor is unable to pay the debt, and upon a compliance by the debtor with such terms and conditions as the President shall deem proper, may order the discharge of such debtor from his imprisonment. The debtor shall not be liable to be imprisoned again for the same debt; but the judgment shall remain in force, and may be satisfied out of any estate which may then, or at any time afterward, belong to the debtor."

§ 800. Execution—Sale of Real Estate or Personal Property—Place of Sale.

§ *1, Act March 3, 1893, ch. 225, 27 Stat. at L. 751, Comp. St. 1901, p. 710, 3 F. S. A. 54.* "That all real estate or any interest in land sold under any order or decree of any United States court shall be sold at public sale at the courthouse of the county, parish, or city in which the property, or the greater part thereof, is located, or upon the premises as the court rendering such order or decree of sale may direct."

Personal property sold same as real estate unless otherwise ordered.

§ *2, Act March 3, 1893, ch. 225, 27 Stat. at L. 751, Comp. St. 1901, p. 710, 3 F. S. A. 54.* "That all personal property sold under any order or decree of any court of the United States shall be sold as provided in the first section of this act, unless, in the opinion of the court rendering such order or decree, it would be best to sell it in some other manner."

§ 801. Execution—Sale of Real Estate—Publication of Notice.

§ *3, Act March 3, 1893, ch. 225, 27 Stat. at L. 751, Comp. St. 1901, p. 710, 3 F. S. A. 54.* "That hereafter no sale of real estate under any order, judgment, or decree of any United States court shall be had without previous publication of notice of such proposed sale being ordered and had once a week for at least four weeks prior to such sale in at least one newspaper printed, regularly issued, and having a general circulation in the county and state where the real estate proposed to be sold is situated, if such there

be. If said property shall be situated in more than one county or state, such notice shall be published in such of the counties where said property is situated, as the court may direct. Said notice shall, among other things, describe the real estate to be sold. The court may, in its discretion, direct the publication of the notice of sale herein provided for to be made in such other papers as may seem proper."

§ 802. Execution—Sale of Real Estate—Marshal's Successor to Continue Proceedings.

§ *994, R. S., Comp. Stat. 1901, p. 711, 3 F. S. A. 52, Rose's Code, § 1872.* "When a marshal dies, or is removed from office, or the term of his commission expires, after he has taken in execution, under process from a court of the United States, any lands, tenements, or hereditaments, and before sale or other final disposition thereof, the like process shall issue to the succeeding marshal, and the same proceeding shall be had as if such marshal had not died or been removed, or the term of his commission had not expired. And when a marshal dies or is removed from office, or the term of his commission expires, after he has sold any lands, tenements, or hereditaments, under process from the court of the United States, and before a deed for the same is executed by him to the purchaser, such court may, on application by the purchaser, or by the plaintiff at whose suit the sale was made, setting forth the case and the reason why the title was not perfected by said marshal, order the marshal for the time being to perfect the title and execute a deed to the purchaser, upon his paying the purchase money and costs remaining unpaid."

§ 803. Execution—Sale of Real Estate in Government Suits—Purchase by Government.

§ *3470, R. S., Comp. St. 1901, p. 2318, 3 F. S. A. 52.* "At every sale, on execution, at the suit of the United States, of lands or tenements of a debtor, the United States may, by such agent as the Solicitor of the Treasury shall appoint, become the purchaser thereof; but in no case shall the agent bid in behalf of the United States a greater amount than that of the judgments for which such estate may be exposed to sale, and the costs. Whenever such purchase is made, the marshal of the district in which the sale is held shall make all needful conveyances, assignments, or transfers to the United States."

§ 804. Execution—Sale of Personal Property—Appraisal under § 993, R. S., in Same Manner as Required by State Law.

§ 993, R. S., Comp. Stat. 1901, p. 710, 3 F. S. A. 51, Rose's Code, §§ 737, 1873. "(Goods taken on a fieri facias, how appraised.) When it is required by the laws of any state that goods taken in execution on a writ of fieri facias shall be appraised, before the sale thereof, the appraisers appointed under the authority of the state may appraise goods taken in execution on a fieri facias issued out of any court of the United States, in the same manner as if such writ had issued out of a court of such state. And the marshal, in whose custody such goods may be, shall summon the appraisers, in the same manner as the sheriff is, by the laws of such state, required to summon them; and if the appraisers, being duly summoned, fail to attend and perform the duties required of them, the marshal may proceed to sell such goods without an appraisement. When such appraisers attend they shall be entitled to the like fees as in cases of appraisements under the laws of the state."

CHAPTER 28.

APPELLATE PROCEDURE—LAW ACTIONS.

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§ 820. In General. A judgment at law is carried up for review, not by appeal, but by writ of error. The term "appeal" is reserved exclusively for the designation of proceedings for the review of equity cases; this phraseology is closely adhered to by the Federal courts, and an error of law cannot be considered

under an appeal,—nor can an equity suit be reviewed by writ of error.[1]

The principal distinction between the two methods of review lies in scope of the examination of the appellate court. Only questions of law can be considered upon a writ of error, while an appeal carries up the entire cause, both as to law and fact, for reconsideration.

Writs of error, together with all other preliminary proceedings upon review, either in law or equity, are regulated, not by state laws, for the conformity act has no application to them, but by Federal statutes or rules, or, in their absence, by the common law in case of a review of a law question and by the English chancery practice in reviews of equity cases.

In fact the statutes governing procedure upon writs of error are, with a very few exceptions, identical with those governing appeals, and the procedure discussed in chapter 41, infra, is applicable to and, as a rule, governs, writs of error as well as appeals.

This being the case, appeals and writs of error are usually treated together, under the head of "Appeal and Error," but it has been thought better in this work to keep separate the procedure in law from that in equity.

For that reason writs of error are herein treated separately, but the chapter is only supplemental to chapter 41, and only those points wherein the procedure on error differs from, or is controlled by different statutes than, the procedure on appeal, are here considered at any length.

The arrangement of this chapter is parallel, as far as possible, with that of chapter 41; writs of error are treated as constituting four general classes:

1. Writ of error from United States district courts to the United States Supreme Court.

2. Writ of error from United States district courts to circuit courts of appeals.

[1] Stevens v. Clark, 10 C. C. A. 379, 62 Fed. 321; Highland Boy Gold Mining Company v. Strickley, 54 C. C. A. 186, 116 Fed. 852; Francisco v. Chicago & A. R. R. Co. 79 C. C. A. 292, 9 Ann. Cas. 628, 149 Fed. 359; Ghost v. United States, 94 C. C. A. 253, 168 Fed. 843; Missouri Pac. R. R. Co. v. Chicago & A. R. R. Co. 132 U. S. 191, 33 L. ed. 309, 10 Sup. Ct. Rep. 65.

3. Writ of error from circuit courts of appeals to Supreme Court.

4. Writ of error from state courts to United States Supreme Court.

In addition to these four classes of cases, there is provided a method of review by the Supreme Court in cases where the decision of the circuit courts of appeals is otherwise final (infra, chapter 39).

Procedure in all four of those general classes is identical, except as to the time within which the appeal must be sued out, and as to differences in practice due to variations in the various rules of different circuits.[2]

Consequently all proceedings on error are herein treated collectively, except as to time, while proceedings upon certiorari or certification of questions of law, are separately treated. Procedure on error from courts of Hawaii, Porto Rico, Alaska, Philippines, and District of Columbia, falls within one of the four classes enumerated as indicated.

§ 821. Parties to Writ of Error. In case of a joint judgment, all parties who are affected by it must join in the application for a writ of error, unless some of them, upon being notified by those of their codefendants who desire to sue out the writ of their intention so to do, refuse to join; in which case the party or parties desiring the writ are entitled to it without such joinder upon motion stating the facts. But the notice and consequent order permitting the severance of the parties must be incorporated in the record.[3]

This notice and refusal and the order allowing the writ upon motion showing these facts, is known as "Summons and Severance," and is essential to the jurisdiction of the appellate court. But notice in open court at the time when the judgment is rendered, the writ being allowed at that time upon motion, if shown by the

[2] See Rules of all Circuits in Appendix, post.

[3] Hardee v. Wilson, 146 U. S. 180, 36 L. ed. 933, 13 Sup. Ct. Rep. 39; Godbe v. Tootle, 154 U. S. 577, 19 L. ed. 831, 14 Sup. Ct. Rep. 1164; Estis v. Trabue, 128 U. S. 229, 32 L. ed. 437, 9 Sup. Ct. Rep. 58; Humes v. Third Nat. Bank, 4 C. C. A. 668, 54 Fed. 917, and cases there cited at page 920.

record, amounts to summons and severance, and no written notice is then required.[4]

§ 822. Time for Writ of Error—District Courts to Supreme Court. A writ of error from the United States district courts to the United States Supreme Court must be sued out within two years from the entry of judgment. The statute governing this [5] is the same as that governing appeals of the same class.[6]

§ 823. Time for Writs of Error to Circuit Court of Appeals. That part of § 11, Act March 3, 1891, which prescribes six months as the time within which appeals must be taken to the circuit courts of appeals, applies as well to writs of error.[7]

§ 824. Time for Writs of Error from Circuit Court of Appeals to Supreme Court. § 6 of the Act of March 3, 1891, limits the time within which both writs of error and appeals may be sued out, to one year after entry of judgment.[8]

§ 825. Time to Sue Out Writ of Error to State Court.

§ *1003, R. S., Comp. St. 1901, p. 713, 4 F. S. A. 666.* "Writs of error from a Supreme Court to a state court, in cases authorized by law, shall be issued in the same manner and under the same regulation, and shall have the same effect, as if the judgment or decree complained of had been rendered or passed in the court of the United States."

The writ of error must, therefore, be allowed within two years after entry of judgment, as provided by § 1008, R. S., Comp. St. 1901, p. 715, 4 F. S. A. 668.

§ 826. Procedure on Error to Circuit Court of Appeals Same as to Supreme Court. The practice and procedure up-

[4] Lamon v. Speer Hardware Co. 111 C. C. A. 462, 190 Fed. 734; Alsop v. Conway, 110 C. C. A. 366, 188 Fed. 572; Ireton v. Penna. Coal Co. 107 C. C. A. 304, 185 Fed. 84; Love v. Export Storage Co. 74 C. C. A. 155, 143 Fed. 1; Loveless v. Ransom, 46 C. C. A. 515, 107 Fed. 627; McNulta v. West Chicago Park, 39 C. C. A. 545, 99 Fed. 328.

[5] R. S. 1008, Comp. St. 1901, p. 715, 4 F. S. A. 662. (§ 2052 infra.)

[6] § 2052, infra. [7] § 2053, infra. [8] § 2055, infra.

on error to the circuit court of appeals is identical with that upon error to the Supreme Court, except as to differences in practice resulting from discrepancies between the rules of the various circuits.[9]

§ 827. Allowance of Writ of Error. What is said of the petition for appeal in chapter 41 [10] applies as well to the petition for a writ of error, and the form there given will serve as a guide here.

The only distinction between the granting of an appeal and a writ of error rests in the nature of the right to have the review allowed. In case of an appeal the right of review is absolute, and the court cannot refuse it; [11] but a writ of error may be denied if the grounds assigned in the assignment of errors appear insufficient to the court.[12]

§ 828. Amendment of Writ of Error. Prior to the passage of the act of June 1, 1872, any formal defect in a writ of error defeated the jurisdiction of the Supreme Court, and could not be so amended as to cure any such defect.[13]

§ 1005, R. S., taken from the act of June 1, 1872, permits an amendment of writs of error as to matters of form subject to the discretion of the court. The section is as follows:

> "The Supreme Court may, at any time, in its discretion and upon such terms as it may deem just, allow an amendment to a writ of error, when there is a mistake in the teste of the writ, or a seal to the writ is wanting, or when the writ is made returnable on a day other than the day of the commencement of the term next ensuing the issue of the writ,

9 § 11, Act. Mar. 3, 1891, Comp. St. 1901, p. 715, 4 F. S. A. 668, infra, § 2057.

10 § 2058, infra. 11 § 2058, infra.

12 Simpson v. First Nat. Bank, 129 Fed. 257, 63 C. C. A. 371.

13 Insurance Co. of Valley of Va. v. Mordecai, 21 How. 195, 16 L. ed. 94; Porter v. Foley, 21 How. 393, 16 L. ed. 154; Carrol v. Dorsey, 20 How. 204, 15 L. ed. 803; Hodge v. Williams, 22 How. 87, 16 L. ed. 237; Wilson v. Life Insurance Co. 12 Pet. 140, 9 L. ed. 1032; Deneale v. Archer, 8 Pet. 526, 8 L. ed. 1033; Davenport v. Fletcher, 16 How. 142, 14 L. ed. 879; Miller v. McKenzie, 10 Wall. 582, 19 L. ed. 1043; Mussina v. Cavazos, 6 Wall. 355, 361, 18 L. ed. 810; The Protector, 11 Wall. 82, 20 L. ed. 47; Moulder v. Forest, 154 U. S. 567, 19 L. ed. 154, 14 Sup. Ct. Rep. 1207.

> or when the statement of the title of the action or parties thereto in the writ is defective, if the defect can be remedied by reference to the accompanying record, and in all other particulars of form: *Provided,* the defect has not prejudiced, and the amendment will not injure the defendant in error."

This section permits amendments in the instances therein enumerated to be allowed by the circuit court of appeals as well as by the Supreme Court, it being provided by the act of March 3, 1891 (§ 11) that "all provisions of law now in force regulating the methods and system of review through appeals or writs of error shall regulate the method and system of appeals and writs of error provided for in this act in respect of the circuit court of appeals, including all provision for bonds or other securities to be required and taken on such appeals and writs of error." [14]

The statute is largely self-explanatory as to the cases in which an amendment may be allowed, but it is to be borne in mind that permission to amend is not a matter of right, but is given only when in the discretion of the court it is deemed just and proper.[15] The theory of § 1005 is that a colorable writ shall operate as a writ of error, the court being given power to amend it in so far as it is informal.[16] But a purported writ of error in the name of the chief justice of the supreme court of a state, bearing the teste of that chief justice, signed by the clerk and sealed by the seal of that court, but not in the name of the President, or under the authority of the United States, is not a colorable writ in such sense as to allow amendment.[17] However, a writ running in the name of the President of the United States, but defective in that it was not tested by the Chief Justice of the United States, nor signed by the clerk of the Supreme Court of the United States, and did not bear the seal of either the Supreme Court or the circuit court, but, instead, was sealed with the seal of the supreme court of Texas, tested by the chief justice and

14 Cotter v. Alabama G. S. R. Co. 61 Fed. 747, 10 C. C. A. 35.
15 Pearson v. Yewdall, 95 U. S. 294, 24 L. ed. 436.
16 Cotter v. Alabama G. S. R. Co. 61 Fed. 747, 10 C. C. A. 35.
17 Bondurant v Watson, 103 U. S. 278, 26 L. ed. 447.

signed by the clerk of that court, is held to be a colorable writ and subject to amendment.[18]

The power to permit the amendment of a defective writ under this section is very liberal, and it is not fatal that more than six months had passed since the final decree sought to be reviewed was pronounced. The statute allows the amendment at any time in the discretion of the court.[19]

Power to allow an amendment, however, depends primarily upon whether or not the defect can be remedied by reference to the accompanying record. If it cannot, no amendment can be granted.[20] But when an amendment is allowed, it dates back by relation to the date of its original issuance, and presupposes jurisdiction from that date.[21]

No amendment can be allowed if it will result in prejudice or injury to the adverse party, or if it appears that the amendment requested, if granted, would be useless, as in a case where the question presented by the record is already settled by previous decisions of the Supreme Court.[22] The name of a party omitted by accident may be added by way of amendment if the same is authorized by a reference to the record,[23] but the objection that a plaintiff is not the real party in interest cannot be set up by way of amendment, and the same may be said of the objection that the plaintiff is without capacity to sue. These things must be set up before trial.[24]

Amendments in "all particulars of form" have been held to include a case where the writ of error was not attached to the transcript nor made a part of the record, but was returned to

[18] Texas, etc., Railway Co. v. Kirk, 111 U. S. 486, 28 L. ed. 481, 4 Sup. Ct. Rep. 500.

[19] Cotter v. Alabama G. S. R. Co. 61 Fed. 747, 10 C. C. A. 35.

[20] Cotter v. Alabama G. S. R. Co. 61 Fed. 750, 10 C. C. A. 35; Martin v. Burford, 176 Fed. 555, 100 C. C. A. 159; Estis v. Trabue, 128 U. S. 228, 32 L. ed. 437, 9 Sup. Ct. Rep. 58.

[21] Knickerbocker Ins. Co. v. Pendleton, 115 U. S. 339, 29 L. ed. 432, 6 Sup. Ct. Rep. 74.

[22] Pearson v. Yewdall, 95 U. S. 294, 24 L. ed. 436.

[23] Walton v. Marietta Chair Co. 157 U. S. 346, 39 L. ed. 725, 15 Sup. Ct. Rep. 626; Thomas v. Green Co. 77 C. C. A. 487, 146 Fed. 969.

[24] Texas & P. R. Co. v. Jackson, 193 Fed. 948, 113 C. C. A. 576; St. Louis & S. F. R. Co. v. Herr, 193 Fed. 950, 113 C. C. A. 578; Northwestern S. S. Co. v. Cochran, 111 C. C. A. 626, 191 Fed. 149.

the appellate court upon the day when the transcript was filed therein properly indorsed. Having performed its function, it is permitted to be attached to the record after being received by the appellate court as should have been done in the first instance.[25]

§ 829. Writ of Error from Supreme Court—By Whom Issued.

§ 1004, R. S., Comp. St. 1901, p. 713, 4 F. S. A. p. 616 as amended Jan. 22, 1912, ch. 12, 37 Stat. at L. 54. "Writs of error returnable to the Supreme Court or a circuit court of appeals may be issued as well by the clerks of the district courts, under the seals thereof, as by the clerk of the Supreme Court or of a circuit court of appeals. When so issued they shall be, as nearly as each case may admit, agreeable to the form of a writ of error issued by the clerk of the supreme court or the clerk of a circuit court of appeals."

§ 830. Assignment of Errors.

§ 997, R. S., Comp. St. 1901, p. 712, 4 F. S. A. 605. "There shall be annexed to and returned with any writ of error for the removal of a cause, at the day and place therein mentioned, an authenticated transcript of the record, an assignment of errors, and a prayer for reversal, with a citation to the adverse party."

This assignment of errors must set forth separately and par-

[25] Cotter v. Alabama G. S. R. Co. 61 Fed. 747, 10 C. C. A. 35. Amendments under this section have been allowed in the following cases: Texas R. Co. v. Kirk, 111 U. S. 486, 28 L. ed. 481, 4 Sup. Ct. Rep. 500; Course v. Stead, 4 Dall. 22, 1 L. ed. 724; Burnham v. North Chicago Street R. R. Co. 87 Fed. 168, 30 C. C. A. 594; Alaska United Gold Mining Co. v. Keating, 116 Fed. 561, 53 C. C. A. 655; Miller v. Texas, 153 U. S. 535, 38 L. ed. 812, 14 Sup. Ct. Rep. 874; McPhaul v. Lapsey, 20 Wall. 282, 22 L. ed. 346; Walton v. Marietta Chair Co. 157 U. S. 342, 39 L. ed. 725, 15 Sup. Ct. Rep. 626; Pacific Bank v. Mixter, 114 U. S. 463, 29 L. ed. 221, 5 Sup. Ct. Rep. 944; Moore v. Simonds, 100 U. S. 145, 25 L. ed. 590; Gumbel v. Pitkin, 113 U. S. 545, 28 L. ed. 1128, 5 Sup. Ct. Rep. 616; Estis v. Trabue, 128 U. S. 225, 32 L. ed. 437, 9 Sup. Ct. Rep. 58; United States v. Schoverling, 146 U. S. 76, 36 L. ed. 893, 13 Sup. Ct. Rep. 24; Atherton v. Fowler, 91 U. S. 143, 23 L. ed. 265; Evans v. Brown, 109 U. S. 180, 27 L. ed. 898, 3 Sup. Ct. Rep. 83; Mossman v. Higginson, 4 Dall. 12, 1 L. ed. 720; Sea v. Conn. Mutual Life Ins. Co. 154 U. S. 659, 25 L. ed. 772, 14 Sup. Ct. Rep. 1191; Hampton v. Rouse, 15 Wall. 684, 21 L. ed. 250; Semmes v. United States, 91 U. S. 21, 23 L. ed. 193; Nat. Bank v. Bank of Commerce, 99 U. S. 608, 25 L. ed. 362.

ticularly each error asserted and intended to be urged.[26] It must be filed *with* the petition for the writ, and no writ can be allowed until the assignment has been filed.[27] The form of assignment suggested in chapter 41, § 2059, will suffice as a guide for the assignment upon error.

§ 831. Citation.

§ *998, R. S., Comp. St. 1901, p. 712, 4 F. S. A. 609.* "When the writ is issued by a circuit court to a district court, the citation shall be signed by the judge of such district court, or by the circuit judge of such circuit court, or by a justice of the Supreme Court and the adverse party shall have at least twenty days' notice."

§ *999, R. S., Comp. St. 1901, p. 712, 4 F. S. A. 609.* "When the writ is issued by the Supreme Court to a circuit court, the citation shall be signed by a judge of such circuit court, or by a justice of the Supreme Court, and the adverse party shall have at least thirty days' notice; and when it is issued by the Supreme Court to a state court, the citation shall be signed by the chief justice or judge or chancellor of said court rendering the judgment or passing the decree complained of, or by a justice of the Supreme Court of the United States, and the adverse party will have at least thirty days' notice."

Citation in error, like citation in appeal,[28] is a formal notice of the allowance of the writ. It may be waived, not being jurisdictional.

A distinction is drawn, however, between citation in appeal, and upon error, in that notice in open court, in the former, excuses the issuance of the citation, while in the latter it does not.[29]

The citation should be signed as prescribed by R. S. 998–999, Comp. St. 1901, p. 712, 4 F. S. A. 609,[30] but failure to sign is immaterial if the defendant in error enter his appearance.[31]

[26] Supreme Court Rule, 35, Appendix, post. C. C. A. Rule, 11, Appendix, post.
[27] § 2059, infra.
[28] § 2060, infra.
[29] United States v. Phillips, 121 U. S. 254, 30 L. ed. 914, 7 Sup. Ct. Rep. 874; Loveless v. Ransom, 109 Fed. 391, 48 C. C. A. 434.
[30] § 2060, infra.
[31] Freeman v. Clay, 48 Fed. 849, 1 C. C. A. 115.

The citation must be served personally upon the attorney of record, or the party who recovers judgment,—the return being made according to the rule of court governing the service of citations.[32]

§ 832. Bond on Error. The bond required upon suing out a writ of error is governed by the same provisions of law applying to bond on appeal,[33] and the discussion contained in chapter 41, § 2061, applies alike to bond on appeal and in error.

The forms there set forth will serve as forms on error, the necessary changes in phraseology readily suggesting themselves.

§ 833. No Bond Required of United States. A writ of error bond is not required of the United States, nor of any party acting under its direction, the taxable costs in such cases being payable out of the contingent fund of the Department under whose directions the proceedings were instituted. § 1001, R. S., Comp. St. 1901, p. 713, 4 F. S. A. 615, quoted in chapter 41, § 2062, infra, applies as well to writs of error as to appeals.

§ 834. Supersedeas. Supersedeas on error, as in case of appeal, can only be secured by a strict compliance with the statutes controlling it.[34]

The discussion of supersedeas in appeal, chapter 41, § 2062, is entirely applicable to supersedeas on error, there being no distinction as to practice, procedure, or effect.

§ 835. Proceedings in Forma Pauperis. The act of July 20, 1892, Comp. St. 1901, p. 706, 2 F. S. A. 294, permitting any citizen of the United States to "commence and prosecute to conclusion," any action, without prepaying fees or costs under certain circumstances, has been variously construed by the various circuit courts of appeals, some holding that it applies to appeals and writs of error, as well as original proceedings, while others took the opposite view. The Supreme Court, however,

[32] Supreme Court Rule, 8, Appendix, post. C. C. A. Rule 14, Appendix, post.
[33] § 2061, infra. [34] § 1007, R. S. infra, § 2063.

has decided that the act applies to original proceedings only, and does not obviate the necessity of giving bond on appeal or error. See infra, § 2065, for the act referred to.

§ 836. Record on Error.

§ 997, R. S., Comp. St. 1901, p. 712, 4 F. S. A. 605. "There shall be annexed to and returned with any writ of error for the removal of a cause, at the day and place therein mentioned, an authenticated transcript of the record, an assignment of errors, and a prayer for reversal, with a citation to the adverse party."

In addition to this section, the contents of the transcript on error, like that on appeal, is governed by Supreme Court Rule 8, and Circuit Court of Appeals Rules 14 and 15.[35]

The complete record upon a writ of error taken from a judgment at law consists of the following papers and proceedings: The complaint or declaration; the subpœna properly indorsed with the marshal's return; the defensive pleading and joining of issue; proceedings in impaneling the jury, verdict of the jury; judgment of the court; bill of exceptions; petition for writ of error; assignment of errors; order allowing the writ of error; the writ of error; the citation; the bond, and the certificate of the clerk authenticating the record.

It is not always necessary that all the documents enumerated be incorporated in the transcript, and the better practice is a stipulation between counsel, agreeing as to the contents of the record. If this cannot be done, it is the duty of the clerk to make up the record in accordance with a precipe filed by the plaintiff in error. The instructions prepared by the circuit courts of appeals of the fourth and eighth circuits[36] will be found to be of use to the practitioner.

It is to be noted that by the terms of § 997, R. S., supra, the transcript is to be annexed to and returned with the original writ of error, and must be authenticated. The clerk's certificate of authentication may be in substantially the following form:

[35] Appendix, post. [36] Appendix, post.

(Title of Court and Cause.)

I ....., Clerk of the ..... Court, etc., hereby certify the foregoing transcript, consisting of ..... pages constitutes a full, true and correct copy of the proceedings had and orders entered in the above entitled cause, as set forth therein; as the same appears on file and of record in this office, with the exception of the writ of error, the citation, and assignment of errors herewith attached, at pages ...., ..., and ...., respectively, which are the original writ, assignment, and citation.

The foregoing constitutes the entire transcript in the cause.

Witness my hand and the official seal of said Court, this .... day of ....., A. D. 191...

.....
Clerk.

§ 837. Reduction, Preparation, and Filing of Record on Sections 2067, 2069, 2070, infra, dealing with reduction and preparation of the record, printing and filing in the appellate courts, and the use of the record in the circuit courts of appeals as part of the transcript in the Supreme Court, apply as well to proceedings in error, as on appeal, and are hereby referred to as covering this subject.

§ 838. Time for Return of Writ of Error. Writs of error issued by the Supreme Court are returnable not exceeding thirty days, except when directed to the courts of California, Oregon, Nevada, Washington, Utah, Montana, Arizona, Wyoming, North Dakota, South Dakota, Alaska, Idaho, Hawaii, and Porto Rico, in which case the time is sixty days and to the Philippines when it is one hundred and twenty days.

Writs of error issued by the circuit courts of appeals are returnable within thirty days. See section 2072, infra, where rules fixing time are quoted.

§ 839. Summary of Proceedings on Writ of Error. The following are the steps to be taken in order to procure a writ of error from the judgment of a Federal court in law actions, whether the proceeding be upon writ of error from the district court to the circuit court of appeals, from the district court direct to the Supreme Court, or from the circuit courts of appeals to the Supreme Court in cases where such procedure is allowable:

First. The petition for a writ of error must be addressed in writing to the lower court or to the judge thereof in vacation, unless the writ of error is taken and allowed in open court at the term during which the judgment was rendered, in which case no written petition or citation is required.

Second. With this petition must be filed an assignment of errors.

Third. The order allowing the writ of error must be signed by the justice or judge of the lower court.

Fourth. A writ of error bond, satisfactory to the judge allowing the writ of error, must be furnished and approved by him either at the time when the writ of error is allowed, or within a reasonable time thereafter with the permission of the appellate court. This bond may act as supersedeas if desired.

Fifth. The citation or notice of the allowance of the writ of error must be signed by the judge and served upon the appellee.

Sixth. The writ of error must be issued either by the clerk of the district court, the circuit court of appeals, or the Supreme Court, as the case may be (supra, § 829).

§ 840. Review by Certiorari and Certification of Questions of Law.

§§ 239–240, Judicial Code,[a] *36 Stat. at L. 1157, Comp. St. 1911, p. 228, 1912 Supp. F. S. A. v. 1, pp. 231, 232.* Methods of review by certiorari, and certification to the Supreme Court, are provided in the cases there enumerated. The procedure in procuring such review of a judgment at law is in no way different from the same procedure in equity, and is covered by chapter 41, §§ 2074, 2075.

§ 841. Procedure on Error to Territories. The statutes prescribing procedure on review of decisions from the courts of Porto Rico,[37] Alaska,[38] the Philippines,[39] District of Columbia,[40] and Hawaii[41] apply not alone to appeals, but to "appeals and

[37] § 244, Judicial Code, infra, § 2013.
[38] § 247, Judicial Code, infra, § 2015.
[39] § 248, Judicial Code, infra, § 2016.
[40] §§ 250, 251, Judicial Code, infra, §§ 2018, 2019.
[41] § 246, Judicial Code, infra, § 2014.

[a] Drawn from § 6 of Act of March 3, 1891, ch. 517, 26 Stat. at L. 828, Rose's Code, § 1904, Comp. St. 1901, p. 549, 4 F. S. A. 409, which is repealed by § 237, Judicial Code.

writs of error," and chapter 41, §§ 2076–2082, are hereby referred to as settting forth the rules of procedure applicable in all such cases.

§ 842. Certification to Supreme Court from the Ninth Circuit in Alaska Cases.

§ 134, Judicial Code,[b] *36 Stat. at L. 1134, Comp. St. 1911, p. 195, 1912 Supp. F. S. A. v. 1, p. 197.* Provides for a review by the Supreme Court of cases certified to it by the circuit court of appeals for the ninth circuit in cases there decided, from the district court of Alaska.

The discussion contained in chapter 41, § 1026, covers the ground.

§ 843. Procedure after Transcript Reaches Appellate Court. After the transcript is properly before the appellate court, the cause is docketed, heard and disposed of according to the rules of the particular court before which it is conducted. See Appendix for rules.

What is said in chapter 41, § 2084–2091, infra, with regard to dismissal of appeals, diminution of record, mandate, and procedure upon death of party is applicable to writs of error, and need not be repeated.

§ 844. No Reversal for Error in Fact.

§ 1011, R. S., Comp St. 1901, p. 715, 4 F. S. A. 624. "There shall be no reversal in the Supreme Court or in a circuit court upon a writ of error, for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court, or for any error in fact."

§ 845. Damages and Costs on Error.

§ 1010, R. S., Comp. St. 1901, p. 715, 4 F. S. A. 623. "Where, upon writ of error, judgment is affirmed in the Supreme Court or a circuit court, the court shall adjudge to the respondent in error just damages for his delay, and single or double costs at its discretion."

[b] Drawn from § 202 of Criminal Code of Alaska, 1 F. S. A. 370, and §§ 504 and 505 of Civil Code of Alaska, 1 F. S. A. 147, 148.

CHAPTER 29.

A SUIT IN EQUITY—SUMMARY.

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§ 860. The Bill.[1] After preparing a bill in equity in conformity with Rule 25,[a] the same may be filed under Rule 1, providing that the court is always open for such purposes.

§ 861. Precipe and Subpœna.[2] Under Rule 12,[b] whenever a bill is filed, and not before, the clerk shall issue the process of subpœna for defendant thereon as of course, on the application of plaintiff. Time for return of subpœna is set out in § 864 below.

[1] Ch. 30, post. [2] §§ 912–3, infra.
[a] See Equity Rule 25, with Annotations, in Appendix, post.
[b] See Equity Rule 12, with Annotations, in Appendix, post.

§ 862. Discovery—Interrogatories.[3] The plaintiff at any time after filing the bill, and not later than 21 days after the joinder at issue, may file written interrogatories for discovery of facts and documents material to the issue.

§ 863. Depositions under Order of Court.[4] Rule 47[c] specifies the time of taking depositions, and makes an exception as follows:

"Unless otherwise ordered by the court or judge for good cause shown." Under this exception it seems that depositions may be taken at any time after filing the bill, even before issue is joined, but ordinarily depositions cannot be taken until after issued is joined. See § 871 below.

§ 864. Return of Subpœna.[5] Under Equity Rule 12,[d] the subpœna is returnable into the clerk's office twenty days from the issuing thereof.

§ 865. Time for Defensive Pleading.[6] Under Equity Rules 12[e] and 16,[f] unless the time shall be enlarged for cause shown by a judge of the court, defendant must file his answer or other defense to the bill in the clerk's office on or before the 20th day after service, excluding the day thereof.

§ 866. Hearing of Motion to Dismiss.[7] Under Equity Rule 29,[g] if the defendant move to dismiss the bill or any part thereof the motion may be set down for hearing by either party upon five days' notice.

§ 867. Time for Answer after Overruling Motion to Dismiss.[8] Under Equity Rule 29,[h] if the motion to dismiss be denied, the answer shall be filed within five days thereafter.

[3] § 900, infra. [4] §§ 1000, 1001, infra. [5] § 911, infra.
[6] § 930, infra. [7] § 956, infra. [8] § 972, infra.

[c] See Equity Rule 47, with Annotations, in Appendix, post.
[d] See Equity Rule 12, with Annotations, in Appendix, post.
[e] See Equity Rule 12, with Annotations, in Appendix, post.
[f] See Equity Rule 16, with Annotations, in Appendix, post.
[g] See Equity Rule 29, with Annotations, in Appendix, post.
[h] See Equity Rule 29, with Annotations, in Appendix, post.

§ 868. Time for Answer to Amended Bill.[9] Under Equity Rule 32,[i] the defendant shall answer an amendment to the bill made after answer is filed, within ten days after that on which the amendment or amended bill is filed unless the time is enlarged or otherwise ordered by the judge of the court.

§ 869. Issue—When No Counterclaim or Set-off.[10] Under Equity Rule 31,[j] unless the answer assert a set-off or counterclaim, no reply shall be required without special order of the court or judge, but the cause shall be deemed at issue upon the filing of the answer. If a set-off or counterclaim be filed, presumably the case is at issue upon filing the reply. See § 875 below.

§ 870. Discovery—Interrogatories by Defendant.[11] Under Equity Rule 58,[k] the defendant at any time after filing his answer not later than twenty-one days after joinder of issue, may file interrogatories in writing for the discovery of facts and documents material to his defense of the cause.

§ 871. Depositions in Special Cases after Filing the Bill before Issue Joined.[12] Under Rule 54,[l] as a general rule, depositions under Revised Statutes, §§ 863, 865, 866, and 867, are to be taken after cause is at issue, and under Rule 47 depositions are only taken for good and exceptional cause after the cause is at issue, but in Equity Rule 47 [m] an exception is provided as follows:

> ". . . All depositions taken under a statute, or under any such order of court, shall be taken and filed as follows, *unless otherwise ordered by the court or judge for good cause shown;* . . ."

[9] Ibid. [10] § 979, infra. [11] § 975, infra.
[12] §§ 1000, 1001, infra.
[i] See Equity Rule 32, with Annotations, in Appendix, post.
[j] See Equity Rule 31, with Annotations, in Appendix, post.
[k] See Equity Rule 58, with Annotations, in Appendix, post.
[l] See Equity Rule 54, with Annotations, in Appendix, post.
[m] See Equity Rule 47, with Annotations, in Appendix, post.

Mention is made of the subject here in order to call attention to this exception permitting depositions to be taken before issue is joined.

§ 872. Counterclaim—Time for Serving Copy on Other Defendants.[13] Under Equity Rule 31,[n] if the counterclaim is one which affects the rights of other defendants, they or their solicitors shall be served with a copy of the same within ten days from filing thereof.

§ 873. Motion to Strike Out Defense.[14] Under Equity Rule 33,[o] if an answer set up an affirmative defense, set-off, or counterclaim, the plaintiff may, upon five days' notice, or such further time as the court may allow, test the sufficiency of the same by motion to strike out.

§ 874. Time for Reply.[15] If a reply is required to a set-off or counterclaim pleaded in the answer, plaintiff shall reply under Equity Rule 31,[p] within ten days after filing of the answer unless a longer time be allowed by the court or judge. Other defendants should reply ten days after service of a copy of the answer upon them.

§ 875. Issue When Counterclaim or Set-off is Pleaded.[16] Unless the answer assert a set-off or counterclaim, the cause shall be deemed at issue upon the filing of the answer, but if the answer include a set-off or counterclaim, presumably the cause would be at issue upon the filing of the reply.

§ 876. Trial Calendar. After the time has elapsed for taking and filing depositions under these rules, the case shall be placed on the trial calendar.

[13] § 979, infra. [14] § 978, infra. [15] § 979, infra.
[16] Ibid.
[n] See Equity Rule 31, with Annotations, in Appendix, post.
[o] See Equity Rule, 33 with Annotations, in Appendix, post.
[p] See Equity Rule 31, with Annotations, in Appendix, post.

§ 877. Depositions after Case on Trial Calendar. Under Equity Rule 56, no depositions shall be taken after the case is placed upon the trial calendar, except upon some strong reason shown by affidavit disclosing why the testimony of the witness cannot be had orally on the trial, why his deposition has not been before taken, and setting out the testimony which it is expected the witness will give.

§ 878. Continuances. Under Rule 57,[q] a case may be passed over to another day of the same term by consent of the counsel or order of the court.

A case shall not be continued beyond the term, save in exceptional cases by order of the court upon good cause shown by affidavit and upon such terms as the court shall in its discretion impose, and the case shall be dropped from the trial calendar subject to reinstatement within one year on application to the court by either party, in which event it shall be heard in the earliest convenient day.

§ 879. Reinstatement of Cases Dropped from Calendar—Time for. Under Equity Rule 57,[r] unless a case dropped from the trial calendar is reinstated within the year, the suit shall be dismissed without prejudice to a new one.

§ 880. Regulation of Practice in Equity.

§ 917, R. S., Comp. St. 1901, p. 684, 4 F. S. A. 583, Rose's Code, § 802. "The Supreme Court shall have power to prescribe, from time to time, and in any manner not inconsistent with any law of the United States, the forms of writs and other process, the modes of framing and filing proceedings and pleadings, of taking and obtaining evidence, of obtaining discovery, of proceeding to obtain relief, of drawing up, entering, and enrolling decrees, and of proceeding before trustees appointed by the court, and generally to regulate the whole practice, to be used, in suits in equity or admiralty, by the circuit and district courts."

[q] See Equity Rule 57, with Annotations, in Appendix, post.
[r] See Equity Rule 57, with Annotations, in Appendix, post.

§ 918, R. S., Comp. St. 1901, p. 685, 4 F. S. A. 585, Rose's Code, § 805. "The several circuit and district courts may, from time to time, and in any manner not inconsistent with any law of the United States, or with any rule prescribed by the Supreme Court under the preceding section, make rules and orders directing the returning of writs and processes, the filing of pleadings, the taking of rules, the entering and making up of judgments by default, and other matters in vacation, and otherwise regulate their own practice as may be necessary or convenient for the advancement of justice and the prevention of delays in proceedings."

CHAPTER 30.

THE BILL IN EQUITY.

Sec.
890. General Statement.
891. Differences between State and Federal Statement of Cause of Action.
892. Contents of a Bill in Equity—Equity Rule 25.
893. Caption of the Bill.
894. Citizenship and Residence of Parties.
895. Jurisdictional Grounds.
896. Statement of Ultimate Facts—The Cause of Action.
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905. Amendment—Where Plaintiff Fails to Set Down for Argument Objection in Answer for Defect of Parties.
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909. Joint and Several Demands.

§ 890. General Statement. The initial pleading in a suit in equity is the bill. It is analogous to the declaration in an action at law. While in the past the established formality of its structure placed it in a class apart from most modern pleadings, and while from the very nature of our Federal practice this is still true to some extent, there is nevertheless manifested in the equity rules that took effect February 1, 1913, a strong tendency toward greater simplicity and expedition of pleading, and toward conformity with the rules of pleading governing the form and structure of the complaint in a civil action, as adopted in the various states under the reform or Code procedure.

The Supreme Court of the United States, by Equity Rule 18,[a] has abrogated technical forms of pleading by providing: "Unless otherwise prescribed by statute or these rules, the technical forms of pleadings in equity are abolished."

§ 891. Differences between State and Federal Statement of Cause of Action. A bill in equity differs from the statement of a similar cause of action in the state court in these five main points, —(1) The citizenship and residence of each party must be shown; (2) a ground of Federal jurisdiction must be set out; (3) in cases where the amount in controversy is material this must be districtly averred; (4) a ground of equitable jurisdiction must appear; (5) the bill need not be verified unless special relief, pending the suit is desired.

The citizenship of each party must necessarily be shown where the basis of the court's jurisdiction is diverse citizenship, and, for the sake of uniformity, and as bearing oftentimes on the question of venue, this is also required where the ground of jurisdiction is a Federal question.

The Federal courts being courts of limited jurisdiction, a ground of jurisdiction must be made to appear, which, in cases of concurrent jurisdiction with state courts, is either diverse citizenship or a Federal question, and in both such cases it must also appear that the amount in controversy, exclusive of interest and costs, must exceed the sum or value of $3,000,[1] unless excepted under § 24, Judicial Code.

§ 892. Contents of a Bill in Equity—Equity Rule 25.[b]

"Bill of complaint—contents. Hereafter it shall be sufficient that a bill in equity shall contain, in addition to the usual caption:

"First, the full name, when known, of each plaintiff and defendant, and the citizenship and residence of each party. If any party be under any disability that fact shall be stated.

"Second, a short and plain statement of the grounds upon which the court's jurisdiction depends.

1 §892, infra, above.
a See Equity Rule 18, with Annotations, in Appendix, post.
b See Equity Rule 25, with Annotations, in Appendix, post.

"Third, a short and simple statement of the ultimate facts upon which the plaintiff asks relief, omitting any mere statement of evidence.

"Fourth, if there are persons other than those named as defendants who appear to be proper parties, the bill should state why they are not made parties—as that they are not within the jurisdiction of the court, or cannot be made parties without ousting the jurisdiction.

"Fifth, a statement of and prayer for any special relief pending the suit or on final hearing, which may be stated and sought in alternative forms. If special relief pending the suit be desired, the bill should be verified by the oath of the plaintiff, or someone having knowledge of the facts upon which such relief is asked."

§ 893. Caption of the Bill. Equity Rule 25[c] makes five specifications for framing a bill in equity "in addition to the usual caption."

The title of the court and the title of the action constitute the "usual caption" mentioned in Rule 25 of the bill, but are not under the rules a part of it so as to cure defects of the statement of the cause of action.

It may be set out in the following manner:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ....., ... DIVISION SITTING AT .....

John Doe,
Plaintiff,
vs.
Richard Roe,
Defendant,

COMPLAINT IN EQUITY.

§ 894. Citizenship and Residence of Parties. It has always been a requirement of bills in equity in the Federal courts that "the full name, when known, of each plaintiff and defendant, and the citizenship and residence of each party," should be set out, the purpose being to show jurisdiction when the same depends upon diversity of citizenship and when the ground of jurisdiction is a Federal question for the sake of uniformity, and in both

[c] See Equity Rule 25, with Annotations, in Appendix, post.

cases to protect the parties by enabling them to locate and identify each other with certainty with a view to compelling obedience to any order of the court, and to inform the court as well as the opposing party of the conditions and disabilities, if any, of the respective parties,[1] and as bearing in many cases on the question of venue.

Following the caption is the statement of the citizenship and residence of each party, as follows:

"John Doe, a citizen of the State of ....., residing in ..... County of said State, alleges as his bill of complaint against Richard Roe, a citizen of the State of ..... and residing in ..... County, in said State as follows:"

If one or both of the parties is a corporation, it must be designated as such.[1a]

"Duly organized and existing under the laws of the state of ————, (designating the State) and with its principal place of business at ———— (City and County) and a citizen of said state."

§ 895. Jurisdictional Grounds. "A short, plain statement of the facts upon which the court's jurisdiction depends" refers to the grounds of Federal jurisdiction which must affirmatively appear and must be accurate and explicit, leaving nothing for inference.[2] If the jurisdictional ground is diversity of citizenship, the particular state and county of which each party is a citizen must be set forth by name, and it must be alleged that the party is a "citizen," not merely a "resident," or "inhabitant," thereof.[3] In these cases, too, the venue of the action is placed by statute, in the district of the plaintiff's or defendant's residence, and it must therefore be alleged that the suit is brought in the district court of the district of residence.[4]

It must be remembered that where the jurisdiction depends on diversity of citizenship the test of jurisdiction is *citizenship,* not

[1] Simkins, "A Federal Equity Suit" (2d ed.) p. 269.
[1a] Ibid. pp. 267, 8. [2] Ibid. [3] Ibid.
[4] Ibid. p. 270.

residence, or *habitation,* and nothing short of an allegation of *citizenship* will suffice.

As to allegations of a Federal question, see chapter 7.

So important is the affirmative showing of these jurisdictional facts in the bill, that no appeal will be entertained unless they plainly appear by the record, even though no objection be raised in the court below. An insufficient averment of jurisdictional facts may, however, be amended.[6]

§ 896. Statement of Ultimate Facts—The Cause of Action. A statement of the cause of action showing the grounds of equitable relief should be a "short and simple statement of the ultimate facts upon which the plaintiff asks relief, omitting any mere statement of evidence."

In this respect the bill in equity in the Federal courts differs little, if any, from the better forms required in the reformed or code procedure.

Ultimate facts. The statement of the plaintiff's case must be composed of allegations of fact only,—not inferences drawn from facts, or mere conclusions of law. The meaning of the phrase "ultimate facts;" as used in the rule, is perhaps best explained by the last clause of the third paragraph of the rule itself, to wit, —"omitting any mere statement of evidence." That is to say, ultimate facts are those facts upon which the plaintiff's case directly depends, and which are to be proved by the evidence. A statement of the ultimate facts is a statement of the issues involved,—not of the evidence available to prove the issues.

These ultimate facts should be alleged in positive form, not hypothetically or by way of recital, although it has been held that if the fact appear by necessary implication, the pleading is not defective.[7]

Allegations on information and belief are also permitted where the facts are peculiarly within the knowledge of the defendant.[8]

The "short and simple statement of ultimate facts" has long

[6] Ibid. pp. 270, 272.
[7] Investor Pub. Co. of Mass. v. Dobinson et al. 72 Fed. 603.
[8] Leavenworth and others v. Pepper and others. 32 Fed. 718.

been the end in view in drawing bills in equity, but the statement must not be made so short and simple as to omit essential allegations required to make a cause of action.

Infringement of patent. Under previous rules it has been held that a bill in a suit for the infringement of a patent must not only contain an allegation of the due issuance of the patent, but also of all the facts upon which the authority to so issue it depends.

The new rule being silent as to the necessity of these conditions, and as such allegations have been held not to violate the rule requiring only ultimate facts to be alleged, it is an open question whether or not the pleader is still obliged as formerly to set up these conditions precedent.

Excusing laches. If it appears from the bill that there has been delay in bringing the suit so that the defense of laches might be interposed, it becomes necessary to anticipate the defense and excuse the delay. The facts constituting the excuse must be clearly and distinctly alleged, to enable the court to determine whether the suit has been prosecuted with due diligence.

Fraud. It is also a well-established rule that facts constituting fraud, accident, or mistake must be specifically alleged. Charges of fraud and the like must be clearly proved, and the defendant is entitled to be informed by the bill as to the exact nature of the charges.

Complete statement. The statement of the plaintiff's case is the most important part of the bill. It must contain all the material allegations upon which the plaintiff relies. It must state the case completely, for the court has no power to grant relief not shown by the statement to be within the issues.

§ 897. Proper Parties. "If there are persons other than those named as defendants who appear to be proper parties, the bill should state why they are not made parties,—as that they are not within the jurisdiction of the court, or cannot be made parties without ousting the jurisdiction."

Proper parties are those whose interest in the subject-matter of the litigation may be conveniently settled by making them

parties thereto, but whose presence is not absolutely essential to a final determination of the matter.

Classification of parties. In Shields v. Barrow, 17 How. 130, parties are classified as: "(1) Formal parties. (2) Persons having an interest in the controversy and who ought to be made parties, in order that the court may act on that rule which requires it to decide upon and finally determine the entire controversy, and do complete justice by adjusting all the rights involved in it. These persons are commonly termed 'necessary parties,' but if their interests are separable from those of the parties before the court, so that the court can proceed to a decree, and do complete and final justice without affecting other persons not before the court, the latter are not indispensable parties. (3) Parties who not only have an interest in the controversy, but an interest of such nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience." [9]

It has long been held, and was formerly a part of Equity Rule 47, and is now expressly provided by Rule 39, that the court may, in its discretion, determine the suit without the presence of proper parties, so that the purpose of the provision of Rule 25, above quoted, is undoubtedly to place clearly before the court the reason, if any, for the nonjoinder of such parties, in order that the court may exercise its discretion with regard thereto.

§ 898. The Prayer of the Bill. "A statement of, and prayer for any special relief pending the suit, or upon final hearing, may be stated and sought in alternative forms. If special relief pending the suit be desired, the bill should be verified by the oath of the plaintiff, or someone having knowledge of the facts upon which the relief is asked."

The prayer for process is no longer necessary inasmuch as Equity Rule 12 provides that "whenever a bill is filed, the clerk shall issue the process of subpœna thereon, as of course, upon the application of the plaintiff."

[9] See also 16 Cyc. 190, for definition of indispensable parties.

It would also seem that a general prayer for relief is no longer necessary, although the cautious pleader will undoubtedly continue to incorporate it in his bill, there being no express prohibition of its use, and in view of the fact that a general prayer for relief has been held under former rules sufficient to save the complaint from attack by demurrer when the facts were sufficiently alleged, but the pleader had mistaken the special relief to which he was entitled.

But the general prayer for relief cannot give the power to grant relief other than that shown to be due the plaintiff under the facts alleged, and it is undoubtedly better pleading under the new rules to ask for all the relief desired by appropriate special prayers which, as provided in the rules, may be stated and sought in alternative forms. This provision, authorizing prayers for relief in alternative forms, while it has never before appeared in the rules, is nevertheless merely the expression, in the form of a rule, of what has been held to be permissible in former adjudicated cases.[10]

The alternatives, however, must be consistent, as the bill will otherwise become multifarious. If at the hearing it appears that the prayer is inconsistent with the plaintiff's statement of his case, an amendment may, in some cases, be permitted.

§ 899. Form of the Bill. The bill need not be sworn to by the plaintiff, unless some special relief such as an injunction or writ of ne exeat be desired, pending the suit, in which event it must be verified as required by the rule quoted above.

The bill then becomes in the nature of an affidavit, upon which proceedings for the issuance of the writs granted may be based.

> *Equity Rule 42.*[d] "Every bill or other pleading shall be signed individually by one or more solicitors of record, and such signatures shall be considered as a certificate by each solicitor that he has read the pleading so signed by him; that upon the instructions laid before him regarding the case there is good ground for the same; that no scandalous matter is in-

[10] Jones v. Missouri-Edison Electric Co. 144 Fed. 765, 75 C. C. A. 631.
[d] See Equity Rule 24, with Annotations, in Appendix, post.

serted in the pleading; and that it is not interposed for delay."

If the bill is required to be verified, which is only when special relief pending the suit is desired, it is provided:

Equity Rule 36.[e] "Every pleading which is required to be sworn to by statute or these rules may be verified before any justice or judgment of any court of the United States, or of any state or territory, or of the District of Columbia, or any clerk of any court of the United States, or of any territory, or of the District of Columbia, or any notary public."

An affirmation in lieu of oath may be used.

Equity Rule 78.[f] "Whenever under these rules an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof, make solemn affirmation to the truth of the facts stated by him."

§ 900. Discovery.

Pt. Equity Rule 58.[g] "The plaintiff at any time after filing the bill, and not later than twenty-one days after issue, . . . may file interrogatories in writing for the discovery by the opposite party or parties of facts and documents material to the support . . . of the cause, with a note at the foot thereof stating which of the interrogatories each of the parties is required to answer. . . ."

Further discussions on this subject will be found under chapter 35 on a "Trial—Equity Suits," sections 1006 to 1011, hereafter

§ 901. Stockholders' Bill.

Equity Rule 27.[h] "Every bill brought by one or more stockholders in a corporation against the corporation and other parties, founded on rights which may properly be asserted by the corporation, must be verified by oath, and

e See Equity Rule 36, with Annotations, in Appendix, post.
f See Equity Rule 78, with Annotations, in Appendix, post.
g See Equity Rule 58, with Annotations, in Appendix, post.
h See Equity Rule 27, with Annotations, in Appendix, post.

must contain an allegation that the plaintiff was a share holder at the time of the transaction of which he complains, or that his share had devolved on him since by operation of law, and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and if necessary, of the shareholders, and the causes of his failure to obtain such action, or the reason for not making such effort."

This "verification by oath" is a requirement peculiar to this class of bills only, unless special relief pending suit be desired, as discussed under § 898, above.

§ 902. Same—Old and New Rules Compared. The rule is a re-embodiment of Rule 94, promulgated in 1882, the language being identical, with the exception of the last phrase, "or the reason for not making such effort," which is new.

An examination of the decisions construing former Rule 94 makes clear the reasons for the addition of the phrase, it having been held that if the circumstances are such that it is apparent that efforts on the part of the plaintiff to secure such action as he desires by the directors or trustees or by the other shareholders of the corporation would be useless, then such efforts are unnecessary. But the circumstances manifesting the uselessness of such efforts must be clearly alleged.[11]

Rule 94 expresses primarily the conditions which must precede the exercise of the right of a stockholder to protect the corporation, but emergencies may arise in which the antagonism between the directory and the corporate interests may be unmistakable and the requirements of the rule may be dispensed with, or, it is more accurate to say, do not apply.[12]

By the addition of the alternative phrases, Rule 27 is made broad enough to cover all cases in which a stockholder may bring

[11] Doctor v. Harrington, 196 U. S. 579, 49 L. ed. 606; Delaware & H. Co. v. Albany & S. R. Co. 213 U. S. 435, 53 L. ed. 862.

[12] Delaware & H. Co. v. Albany & S. R. Co. supra.

a suit "founded on rights which may properly be asserted by the corporation," and conforms to the law as declared by the cases above cited, recognizing that there may be reasons which excuse the efforts of the plaintiff to secure action by the directors or stockholders.

A ful land unequivocal compliance with the requirements of the rule is necessary,[13] and the absence of either of the required allegations constitutes ground for a motion to dismiss the bill.[14]

§ 903. Same—Purposes of the Rule. The purposes of the rule are obvious, to wit:

1. It is intended to preclude persons from buying stock in corporation for the purpose of extortion by litigation; hence the requirement of the allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him since by operation of law.[15]

2. The purpose of the clause requiring it to be alleged "that the suit is not a collusive one, to confer on a court of the United States jurisdiction of a cause of which it would not otherwise have cognizance," is "to secure the Federal court from imposition upon the jurisdiction." [16]

3. The remainder of the rule, requiring that the bill "set forth with particularity the efforts of the plaintiff to secure such action as he desires, on the part of the managing directors or trustees, and if necessary, of the shareholders, and the causes of his failure to obtain such action or the reason for not making such effort," recognizes the right of the corporate directory to corporate control, making the corporation paramount even when its rights are to be protected or sought through litigation.[17]

§ 904. Amendments of Bill.

As of course.

Equity Rule 28.[1] "The plaintiff may, as of course, amend

[13] Ziegler v. Lake Street Elev. R. R. Co. 76 Fed. 662.

[14] Illinois Central R. R. Co. v. Adams, 180 U. S. 28, 45 L. ed. 410. Equity Rule 29; Venner v. Gt. Northern Ry. Co. 153 Fed. 408.

[15] Robinson v. W. Va. Loan Co. 90 Fed. 770, 772; Dimpfel v. Ohio & M. Ry. Co. 110 U. S. 209, 28 L. ed. 121.

[16] Delaware & H. Co. v. Albany & S. R. Co. 213 U. S. 435, 53 L. ed. 862; Young v. Alhambra Min. Co. 71 Fed. 810.

[17] Delaware & H. R. Co. v. Albany & S. R. Co. supra.

[1] See Equity Rule 28, with Annotations, in Appendix, post.

his bill before the defendant has responded thereto, but if such amendment be filed after any copy has issued from the clerk's office, the plaintiff at his own cost shall furnish to the solicitor of record of each opposing party a copy of the bill as amended, unless otherwise ordered by the court or judge."

Under former rule the plaintiff was permitted, unless the amendments were numerous, to furnish copies of the amendments only, with suitable references as to their proper places of insertion.

For purpose and scope of amendments, see Mellor v. Smith, 114 Fed. 120, § 954, R. S., and Simkins' "A Federal Equity Suit," 2d ed. page 353, and §§ 905, 906, 976, below.

Not as of course.

If the plaintiff fails to amend before the defendant files his pleading in response to the bill, his right to do so as of course is gone, and he must then obtain the consent of the defendants or leave of court or of the judge before his amendment can be effective under Rule 28.

Equity Rule 19.[1] "The court may at any time, in furtherance of justice, upon such terms as may be just, permit any process, proceeding, pleading or record to be amended, or material supplemental matter to be set forth in an amended or supplemental pleading. The court, at every stage of the proceeding, must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

Any error or defect in the bill which does not affect the substantial right of party will be disregarded by the court even in the absence of an offer to amend.

These rules, 19 and 28, covering the subject of amendments to the bill, supplant former Equity Rules 28, 29, 30, 45, and 46, and their apparent effect is to greatly broaden the power of the courts in permitting amendments at any or all stages of the proceeding.

[1] See Equity Rule 19, with Annotations, in Appendix, post.

An examination of the decisions on this point under the former rule, however, discloses the fact that the courts have always considered that the power of a court of equity to grant amendments is wholly discretionary, and that in furtherance of justice they will not consider themselves hampered by the particular rules in court. The Federal courts have always been guided in this regard by the circumstances of the particular case, and Equity Rules 19 and 28, seemingly more liberal than their predecessors, are in reality little more than the embodiment of the law as it has long been construed by the court.[18]

§ 905. Amendment—Where Plaintiff Fails to Set Down for Argument Objection in Answer for Defect of Parties.

Equity Rule 43.[k] "Where the defendant shall by his answer suggest that the bill of complaint is defective for want of parties, the plaintiff may, within fourteen days after answer filed, set down the cause for argument as a motion upon that objection only; and where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order to amend his bill by adding parties; but the court shall be at liberty to dismiss the bill, or to allow an amendment on such terms as justice may require."

§ 906. Amendment on Death of Party.

Equity Rule 45.[1] "In the event of the death of either party the court may, in a proper case, upon motion, order the suit to be revived by the substitution of the proper parties. If the successors or representatives of the deceased party fail to make such application within a reasonable time, then any other party may, on motion, apply for such relief, and the court, upon any such motion, may take the necessary orders for notice to the parties to be substi-

[18] See Simkins' "A Federal Equity Suit" (2d ed.) pp. 355 to 360, for discussion cases cited and examples of discretionary power under former rules.

[k] See Equity Rule 43, with Annotations, in Appendix, post.

[1] See Equity Rule 45, with Annotations, in Appendix, post.

tuted and for the filing of such pleadings or amendments as may be necessary."

§ 907. Supplemental Pleading.

Equity Rule 34.[m] "Upon application of either party, the court or judge, may, upon reasonable notice and such terms as are just, permit him to file and serve a supplemental pleading, alleging material facts occurring after his former pleading, or of which he was ignorant when it was made, including the judgment or decree of a competent court rendered after the commencement of the suit, determining the matters in controversy or a part thereof."

Rule as to form of bills of revivor and supplemental.

Equity Rule 35.[n] "It shall not be necessary in any bill of revivor or supplemental bill to set forth any of the statements in the original suit, unless the special circumstances of the case may require it."

§ 908. Parties.

General rule and as to intervention.

Equity Rule 37.[o] Every action shall be prosecuted in the name of the real party in interest, but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute, may sue in his own name without joining with him the party for whose benefit the action is brought. All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs, and any person may be made a defendant who has or claims an interest adverse to the plaintiff. Any person may at any time be made a party if his presence is necessary or proper to a complete determination of the cause. Persons having a united interest must be joined on the same side as plaintiffs or defendants, but when any one refuses to join, he may for such reason be made a defendant.

"Anyone claiming an interest in the litigation may at any time be permitted to assert his right by intervention, but

m See Equity Rule 34, with Annotations, in Appendix, post.
n See Equity Rule 35, with Annotations, in Appendix, post.
o See Equity Rule 37, with Annotations, in Appendix, post.

the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding."

Representatives of a class.

Equity Rule 38.[p] "When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole."

Absence of persons who would be proper parties.

Equity Rule 39.[q] "In all cases where it shall appear to the court that persons, who might otherwise be deemed proper parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may, in its discretion, proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties."

Nominal parties.

Equity Rule 40.[r] "Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party, upon service of the subpœna upon him, need not appear and answer the bill unless the plaintiff specially requires him to do so by the prayer; but he may appear and answer at his option; and if he does not appear and answer he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer he shall be entitled to the costs of all the proceedings against him unless the court shall otherwise direct."

Heir as party—suit to execute trusts of will.

Equity Rule 41.[s] "In suits to execute the trusts of a will it shall not be necessary to make the heir at law a party; but the plaintiff shall be at liberty to make the heir at law

p See Equity Rule 38, with Annotations, in Appendix, post.
q See Equity Rule 39, with Annotations, in Appendix, post.
r See Equity Rule 40, with Annotations, in Appendix, post.
s See Equity Rule 41, with Annotations, in Appendix, post.

a party if he desires to have the will established against him."

Saving rights of absent parties where defendant makes tardy objection.

Equity Rule 44.[t] "If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties, not having by motion or answer taken the objection and therein specified by name or description the parties to whom the objection applies, the court shall be at liberty to make a decree saving the rights of the absent parties."

§ 909. Joint and Several Demands.

Equity Rule 42.[u] "In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the court as parties to a suit concerning such demand all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable."

[t] See Equity Rule 44, with Annotations, in Appendix, post.
[u] See Equity Rule 42, with Annotations, in Appendix, post.

CHAPTER 31.

PROCESS IN EQUITY.

Sec.
910. The Summons in Equity is the Subpœna.
911. Issue—Form—Return of Subpœna.
912. The Precipe.
913. The Subpœna.
914. Alias Subpœnas.
915. Process in Behalf of and against Persons Not Parties.
916. Process by Whom Served.
917. Manner of Serving Subpœnas.
918. Forms of Returns.
919. Form of Process and Return—How Governed.

§ 910. The Summons in Equity is the Subpœna.

Equity Rule 7. "The process of subpœna shall constitute the proper mesne process in all suits of equity, in the first instance, to require the defendant to appear and answer the bill."

§ 911. Issue—Form—Return of Subpœna.

Equity Rule 12.[a] "Whenever a bill is filed, and not before, the clerk shall issue the process of subpœna thereon, as of course, upon the application of the plaintiff, which shall contain the names of the parties and be returnable into the clerk's office twenty days from the issuing thereof. At the bottom of the subpœna shall be placed a memorandum, that the defendant is required to file his answer or other defense in the clerk's office on or before the twentieth day after service, excluding the day thereof; otherwise the bill may be taken *pro confesso.* Where there are more than one defendant, a writ of subpœna may, at the election of the plaintiff, be sued out separately for each defendant, or a joint subpœna against all the defendants."

[a] See Equity Rule 12, with Annotations, in Appendix, post.

§ 912. The Precipe. The "application of the plaintiff" mentioned in Rule 12 is called the "precipe." This is a printed form which may be obtained from the clerk. The following form is suggested:

UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, ... DISTRICT OF ....., ... DIVISION.

.....
—vs.—
.....
} CLERK'S OFFICE
NO. .....
PRECIPE

TO THE CLERK OF SAID COURT, SIR:

Please issue .....
.....
.....

After the words "please issue" there may be inserted the following:—Subpœna for the defendants (naming them).

Dated .....

.....
Attorney for Plaintiff.

§ 913. The Subpœna. After filing of the bill and the precipe, the clerk will issue, sign, and seal a subpœna. The subpœna is a printed form entitled in the court from which it issues, and under § 911, R. S., 4 F. S. A. p. 560, it is in the name of the President of the United States bearing teste of the judge of the district court. The following form is sufficient:

UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, ... DISTRICT OF ....., ... DIVISION.

IN EQUITY.

THE PRESIDENT OF THE UNITED STATES OF AMERICA GREETING.

TO .....:

You are hereby commanded to appear in said District Court of the United States aforesaid within the time specified in the memorandum below to

file your answer or other defense to a bill of complaint exhibited against you in said Court by ..... who ..... citizen of the .....and to do and receive what the court shall have considered in that behalf. And this you are not to omit under penalty of Five Thousand Dollars.

WITNESS the Honorable ..... District Judge of said Court this ..... day of ..... in the year of our Lord One Thousand Nine Hundred ..... and of our Independence, One Hundred and .....

.....
Clerk.

By .....
Deputy Clerk.

Memorandum pursuant to Equity Rule 12.

You are hereby required to file your answer or other defense in the above suit in the Clerk's office of said Court pursuant to said bill, on or before the 20th day after service hereof upon you, excluding the day thereof, otherwise the said bill will be taken *pro confesso.*

.....
Clerk.

By .....
Deputy Clerk.

§ 914. Alias Subpœnas. Inasmuch as the subpœna is returnable into the clerk's office twenty days from the issuing thereof, it will frequently happen that there will be a failure to serve within the time in which the subpœna must be returned. If service be not made within the time limited an alias subpœna may issue.

> *Equity Rule 14.* "Whenever any subpœna shall be returned not executed as to any defendant, the plaintiff shall be entitled to other subpœnas against such defendant, until due service is made."

§ 915. Process in Behalf of and against Persons Not Parties.

> *Equity Rule 11.*[b] "Every person, not being a party in any cause, who has obtained an order, or in whose favor an

[b] See Equity Rule 11, with Annotations, in Appendix, post.

order shall have been made, may enforce obedience to such order by the same process as if he were a party; and every person, not being a party, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such orders as if he were a party."

§ 916. Process by Whom Served.

Equity Rule 15.[c] "The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person especially appointed by the court or judge for that purpose, and not otherwise. In the latter case, the person serving the process shall make affidavit thereof."

§ 917. Manner of Serving Subpœnas.

Equity Rule 13.[d] "The service of all subpœnas shall be by delivering a copy thereof to the defendant personally, or by leaving a copy thereof at the dwelling house or usual place of abode of each defendant, with some adult person who is a member of or resident in the family."

§ 918. Forms of Returns. In the event that the service is made on the defendant personally, the marshal's certificate may be in the following form:

UNITED STATES MARSHAL'S OFFICE
..... DISTRICT OF .....

I HEREBY CERTIFY that I received the within writ on the ..... day of ....., and personally served the same on and by delivering to and leaving with ..... and ..... said defendants named therein, personally, at the County of ..... in said District a copy thereof .....

.....
United States Marshal.

By .....
Deputy.

Dated at .....19...

[c] See Equity Rule 15, with Annotations, in Appendix, post.
[d] See Equity Rule 13, with Annotations, in Appendix, post.

If someone other than the marshal or his deputy make service his affidavit should be in form somewhat as follows for personal service:

STATE OF .....
COUNTY OF ..... } ss

..... being first duly sworn on oath says: That on the ..... day of ..... 19.., he personally served same on ..... and ..... by delivering to and leaving with ..... and ..... said defendant ..... named therein personally in the County of ..... in the said District, a copy thereof .....

.....

Subscribed and sworn to before me this ..... day of ..... 1913.

(Seal)

.....
(Official Designation.)

In the event that the service is not made on the defendant personally, but by substituted service authorized in the above-quoted Equity Rule 13, the marshal's return or the affidavit of service as the case may be should show this fact by reciting that he personally served the writ on the defendants named "by leaving a copy thereof at the dwelling house (or if the defendant has no dwelling house then state 'at the usual place of abode') of the defendant with . . . an adult person who is a member of (or if not a member state 'who is a resident in') the family."

§ 919. Form of Process and Return—How Governed.

§ *913, R. S., Comp. St. 1901, p. 683, 4 F. S. A. 586,* "The forms of mesne process and the forms and modes of proceeding in suits of equity and of admiralty and maritime jurisdiction in the circuit and district courts shall be according to the principles, rules, and usages which belong to courts of equity and of admiralty, respectively, except when it is otherwise provided by statute or by rules of court made in pursuance thereof; but the same shall be subject to alteration and addition by the said courts, respectively, and to regulation by the Supreme Court, by rules prescribed, from

time to time, to any circuit or district court, not inconsistent with the laws of the United States."

§ *922, R. S., Comp. St. 1901, p. 686, 4 F. S. A. 588.* "When the marshal or his deputy is a party in any cause, the writs and precepts therein shall be directed to such disinterested person as the court or any justice or judge thereof may appoint, and the person so appointed may execute and return them."

CHAPTER 32.

DECREE PRO CONFESSO.

Sec.
930. Time for Defensive Pleading Twenty Days after Service of Subpœna.
931. Default When Taken.
932. Pleading Required to Save from Decree *pro Confesso.*
933. Motion to Dismiss on Point of Law.
934. Motion to Make More Definite and Certain.
935. Motion to Strike Redundant, Impertinent, or Scandalous Matter.
936. Motion to Transfer Action to Law Side.
937. Decree *pro Confesso* When Made Final.

§ 930. Time for Defensive Pleading Twenty Days after Service of Subpœna.

Equity Rule 12.[a] ". . . At the bottom of the subpœna shall be placed a memorandum, that the defendant is required to file his answer or other defense in the clerk's office on or before the twentieth day after service, excluding the day thereof; otherwise the bill may be taken *pro confesso.* . . ."

But the time above mentioned under Rule 16 may be enlarged "for cause shown by a judge of the court." Rules 12 and 16 should be read together.

§ 931. Default When Taken.

Equity Rule 16.[b] "It shall be the duty of the defendant, unless the time shall be enlarged, for cause shown, by a judge of the court, to file his answer or other defense to the bill in the clerk's office within the time named in the subpœna as required by Rule 12. In default thereof the plaintiff may, at his election, take an order as of course that the bill be taken *pro confesso*; and thereupon the cause shall be proceeded in *ex parte.*"

a See Equity Rule 12, with Annotations, in Appendix, post.
b See Equity Rule 16, with Annotations, in Appendix, post.

§ 932. Pleading Required to Save from Decree pro Confesso. In order to save from default, the defendant, under Rule 16, "unless the time shall be enlarged for cause shown, by a judge of the court," is required "to file his answer on other defense to the bill in the clerk's office within the time named in the subpœna, as required by Rule 12," to wit, "on or before the twentieth day after service, excluding the day thereof; otherwise the bill may be taken *pro confesso*."

What is such "other defense" as will save a defendant from the taking of the bill against him *pro confesso*?

To avoid confusion it must be remembered that the state rules as to pleadings do not apply to Federal equity suits, but the Federal equity rules and decisions wholly determine the procedure, time, order, and manner of pleading. Hence the filing of a written appearance, a motion for security for costs, a demurrer, a plea, or any other defensive pleading not authorized by the Federal equity rules, would not be sufficient to save from default in a Federal equity suit even though sufficient in a similar suit in the state courts under the state practice of the state wherein the Federal court may be located.

Under the new rules in force February 1, 1913, the following would seem to come under the term "other defense," which would save from default: (1) A special appearance by motion to quash the process on some jurisdictional ground;[1] (2) under Rule 29, motion to dismiss on certain points of law arising upon the face of the bill;[2] (3) under Rule 20 a motion makes more definite and certain;[3] (4) under Rule 21 a motion to strike redundant, impertinent, or scandalous matter;[4] (5) under Rule 22 a motion to transfer to the law side an action at law erroneously begun as a suit in equity.[5] It is, however, not certain that anything other than a motion to dismiss is intended by the term "other defense," as there is no time designated for filing answer except after overruling any other motion than a motion to dismiss or after filing an amended bill.[6]

[1] See chapter 31, on "Process—Equity Suits."
[2] § 933, post.
[3] § 934, post.
[4] § 935, post.
[5] § 936, post.
[6] §§ 867, 868, supra.

§ 933. Motion to Dismiss on Point of Law.

Pt. Equity Rule 29.[c] "Every defense in point of law arising upon the face of the bill, whether for misjoinder, nonjoinder, or insufficiency of fact to constitute a valid cause of action in equity, which might heretofore have been made by demurrer, or plea, shall be made by *motion to dismiss* or in the answer." . . . "If the defendant move to dismiss the bill or any part thereof, the motion may be set down for hearing by either party upon five days' notice, and, if it be denied, answer shall be filed within five days thereafter or a decree *pro confesso* entered."

§ 934. Motion to Make More Definite and Certain.

Equity Rule 20.[d] *"Further and particular statement in pleading may be required.* A further and better statement of the nature of the claim or defense, or further and better particulars of any matter stated in any pleading, may in any case be ordered, upon such terms, as to costs and otherwise, as may be just."

§ 935. Motion to Strike Redundant, Impertinent, or Scandalous Matter.

Equity Rule 21.[e] *"Scandal and impertinence.* The right to except to bills, answers, and other proceedings for scandal or impertinence shall not obtain, but the court may, *upon motion* or its own initiative, order any redundant, impertinent, or scandalous matter stricken out, upon such terms as the court shall think fit."

§ 936. Motion to Transfer Action to Law Side.

Equity Rule 22.[f] *"Action at law erroneously begun as suit in equity—transfer.* If at any time it appear that a suit commenced in equity should have been brought as an action on the law side of the court, it shall be forthwith transferred to the law side and be there proceeded with, with only such alteration in the pleadings as shall be essential."

[c] See Equity Rule 29, with Annotations, in Appendix, post.
[d] See Equity Rule 20, with Annotations, in Appendix, post.
[e] See Equity Rule 21, with Annotations, in Appendix, post.
[f] See Equity Rule 22, with Annotations, in Appendix, post.

§ 937. Decree pro Confesso When Made Final.

Equity Rule 17.[z] *"Decree pro confesso to be followed by final decree—setting aside default.* When the bill is taken *pro confesso* the court may proceed to a final decree at any time after the expiration of thirty days after the entry of the order *pro confesso,* and such decree shall be deemed absolute unless the court shall, at the same term, set aside the same, or enlarge the time for filing the answer, upon cause shown upon motion and affidavit. No such motion shall be granted, unless upon the payment of the costs of the plaintiff up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall direct, for the purpose of speeding the cause."

[z] See Equity Rule 17, with Annotations, in Appendix, post.

CHAPTER 33.

DEFENSIVE PLEADINGS—EQUITY.

Sec.
950. Kinds of Defensive Pleading.
951. Motion Day.
952. Notices.
953. Motions Grantable of Course.
954. To Obtain Better Statement and Particulars.
955. To Remove Redundant, Scandalous, or Impertinent Matter.
956. Defense in Point of Law.
957. Defect of Parties.
958. Notice of Orders.

§ 950. Kinds of Defensive Pleading. Under Equity Rule 29 demurrers and pleas are abolished,[1] and under Equity Rule 21 the right to except to bills and other proceedings for scandal or impertinence shall not obtain.[2] The old forms have evidently been abandoned so that the new proceedings will not be confused by them. The new wine is not put in the old bottles. All defenses are made either by motions or in the answer, and all issues not requiring trial of the principal case may be determined on short notice before the trial.

§ 951. Motion Day.

Equity Rule 6.[a] "Each district court shall establish regular times and places, not less than once each month, when motions requiring notice and hearing may be made and disposed of; but the judge may at any time and place, and on such notice, if any, as he may consider reasonable, make and direct all interlocutory orders, rulings and proceedings for the advancement, conduct and hearing of causes. If the public interest permits, the senior circuit judge of the

1 § 956, post. 2 § 955, post.
a See Equity Rule 6, with Annotations, in Appendix, post.

circuit may dispense with the motion day during not to exceed two months in the year in any district."

§ 952. Notices.

2d paragraph Equity Rule 1.[b] ". . . Any district judge may, upon reasonable notice to the parties, make, direct, and award, at chambers or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable of course, according to the rules and practice of the court."

Pt. Equity Rule 6.[c] ". . . but the judge may at any time and place, and on such notice, if any, as he may consider reasonable, make and direct all interlocutory orders, rulings, and proceedings for the advancement, conduct, and hearing of causes."

Pt. Equity Rule 29.[d] ". . . If the defendant move to dismiss the bill or any part thereof, the motion may be set down for hearing by either party upon five days' notice, and, if it be denied, answer shall be filed within five days thereafter or a decree *pro confesso* entered."

Pt. Equity Rule 73.[e] ". . . Upon two days' notice to enforce and execute decrees; for taking bills *pro confesso;* opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require. . . ."

Under Equity Rule 33 the plaintiff on five days' notice, or such further time as the court may allow, tests the sufficiency of an affirmative defense in the answer by a motion to strike out.

§ 953. Motions Grantable of Course.

Equity Rule 5.[f] "All motions and applications in the clerk's office for the issuing of mesne process or final process

[b] See Equity Rule 1, with Annotations, in Appendix, post.
[c] See Equity Rule 6, with Annotations, in Appendix, post.
[d] See Equity Rule 29, with Annotations, in Appendix, post.
[e] See Equity Rule 73, with Annotations, in Appendix, post.
[f] See Equity Rule 5, with Annotations, in Appendix, post.

to enforce and execute decrees; for taking bills *pro confesso;* and for other proceedings in the clerk's office which do not require any allowance or order of the court or of a judge, shall be deemed motions and applications grantable of course by the clerk; but the same may be suspended or altered or rescinded by the judge upon special cause shown."

§ 954. To Obtain Better Statement and Particulars.

Equity Rule 20.[g] "A further and better statement of the nature of the claim or defense, or further and better particulars of any matter stated in any pleading, may in any case be ordered, upon such terms, as to costs and otherwise, as may be just."

§ 955. To Remove Redundant, Scandalous, or Impertinent Matter.

Equity Rule 21.[h] "The right to except to bills, answers, and other proceedings for scandal or impertinence shall not obtain, but the court may, upon motion or its own initiative, order any redundant, impertinent or scandalous matter stricken out, upon such terms as the court shall think fit."

§ 956. Defense in Point of Law.

Equity Rule 29.[i] "Demurrers and pleas are abolished. Every defense in point of law arising upon the face of the bill, whether for misjoinder, nonjoinder, or insufficiency of fact to constitute a valid cause of action in equity, which might heretofore have been made by demurrer or plea, shall be made by motion to dismiss or in the answer; and every such point of law going to the whole or a material part of the cause or causes of action stated in the bill may be called up and disposed of before final hearing at the discretion of the court. Every defense heretofore presentable by plea in bar or abatement shall be made in the answer and may be separately heard and disposed of before the trial of the principal case in the discretion of the court. If the defendant move to dismiss the bill or any part thereof, the motion may be set down for hearing by either party upon five days' notice, and, if it be denied, answer shall be filed within five days thereafter or a decree *pro confesso* entered."

[g] See Equity Rule 20, with Annotations, in Appendix, post.
[h] See Equity Rule 21, with Annotations, in Appendix, post.
[i] See Equity Rule 29, with Annotations, in Appendix, post.

§ 957. Defect of Parties.

Equity Rule 43.[j] "Where the defendant shall by his answer suggest that the bill of complaint is defective for want of parties, the plaintiff may, within fourteen days after answer filed, set down the cause for argument as a motion upon that objection only; and where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order to amend his bill by adding parties; but the court shall be at liberty to dismiss the bill, or to allow an amendment on such terms as justice may require."

Equity Rule 44.[k] "If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties, not having by motion or answer taken the objection and therein specified by name or description the parties to whom the objection applies, the court shall be at liberty to make a decree saving the rights of the absent parties."

§ 958. Notice of Orders.

Equity Rule 4.[l] "Neither the noting of an order in the equity docket nor its entry in the order book shall of itself be deemed notice to the parties or their solicitors; and when an order is made without prior notice to, and in the absence of, a party, the clerk, unless otherwise directed by the court or judge, shall forthwith send a copy thereof, by mail, to such party or his solicitor and a note of such mailing shall be made in the equity docket, which shall be taken as sufficient proof of due notice of the order."

[j] See Equity Rule 43, with Annotations, in Appendix, post.
[k] See Equity Rule 44, with Annotations, in Appendix, post.
[l] See Equity Rule 4, with Annotations, in Appendix, post.

CHAPTER 34.

THE ANSWER—EQUITY SUITS.

Sec.
970. General Statement.
971. Answer as Such Is Not Evidence.
972. Time for Answer.
973. Contents of Answer.
974. Form of Answer.
975. Discovery.
976. Amendments.
977. Supplemental Answer.
978. Attacks upon Answer.
979. Reply—When Required—When Cause at Issue.
980. Counterclaim and Set-off.
981. Set-off or Counterclaim Subject of Independent Equity Suit against Plaintiff.
982. Cross Bill not Provided for in Rules.
983. Effect of Failure to Plead Counterclaim or Set-off.

§ 970. General Statement. The similarity of the provisions of the new equity rules that took effect February 1, 1913, to the Code provisions of the several states that have adopted the reform procedure, is especially marked with respect to the answer in equity. Under Rule 18 technical forms of pleading are abolished. Under Rule 29, defenses formerly presentable by pleas or demurrers must be contained in the answer, though they may be separately heard. Rule 30 provides for specific denials, denials on lack of knowledge, admission of averments not denied, amendments on notice when justice requires and allows inconsistent defenses, set-offs, and counterclaims in the answer.

Differences from state practice:

1. Point of law formerly raised by demurrer or plea may be set out in answer.

2. Counterclaim covers matters pleaded in state courts by cross bill or cross complaint.

3. No general denial.

4. No verification unless special relief pending suit sought.

§ 971. Answer as Such Is Not Evidence. The answer is no longer evidence, except possibly as containing admissions on the part of the defendant.

Under the old chancery practice the answer was considered as evidence because the testimony of a party was not admissible on the ground that interest made him incompetent. The reason for making the answer evidence disappeared with the change of practice authorized by § 858, R. S., Comp. Stat. 1901, page 859, 7 F. S. A. p. 1116, providing that "in the courts of the United States no witness shall be excluded in any action . . . because he is a party to or interested in the issues tried."

The new rules conform to the present conditions, the revision omitting or changing all that existed in the old rules supporting the proposition. Thus old Equity Rule 59, providing for verification of the answer, has been superseded by new Rule 30, which provides for the verification of "every pleading which is required to be sworn to by statute, or these rules."

Old Equity Rule 41. "Answer, when not evidence," is not contained in the new rules. So, also, there has been omitted from the revision old Rules 42, 43, and 44, relating to answering interrogatories contained in the bill. New Equity Rule 58 is the only relic of the old chancery practice requiring defendants to answer under oath.

The answer could not be evidence under the new rules, as Equity Rule 30 provides: "The answer may state as many defenses, in the alternative, *regardless of consistency,* as the defendant deems essential to his defense." In the event of pleading of inconsistent defenses, if the answer were evidence, there would be a conflict of evidence.

§ 972. Time for Answer. Unless the defendant files within twenty days after service of the subpœna some "other defense"

as permitted by Equity Rules 12 and 16, or "unless the time shall be enlarged for cause shown, by a judge of the court" under Rule 16, it is the duty of the defendant to file an answer.

Under Rule 29, "if the defendant move to dismiss the bill or any part thereof, the motion may be set down for hearing by either party upon five days' notice, and, if it be denied, answer shall be filed within five days thereafter, or a decree *pro confesso* entered.

Equity Rule 32 provides for the answer to amended bill as follows: "In every case where an amendment to the bill shall be made after answer filed, the defendant shall put in a new or supplemental answer within ten days after that on which the amendment or amended bill is filed, unless the time is enlarged or otherwise ordered by a judge of the court; and upon his default, the like proceedings may be had as a case of an omission to put in an answer."

§ 973. Contents of Answer.

Pt. Rule 29.[a] "Every defense in point of law arising upon the face of the bill, whether for misjoinder, nonjoinder, or insufficiency of fact to constitute a valid cause of action in equity which might heretofore have been made by demurrer or plea, shall be made by motion to dismiss or in the answer. . . . Every defense heretofore presentable by plea in bar or abatement shall be made in the answer, and may be separately heard and disposed of before the trial of the principal case in the discretion of the court."

Equity Rule 30.[b] *Answer—contents—counterclaim.* "The defendant in his answer shall in short and simple terms set out his defense to each claim asserted by the bill, omitting any mere statement of evidence and avoiding any general denial of the averments of the bill, but specifically admitting or denying or explaining the facts upon which the plaintiff relies, unless the defendant is without knowledge, in which case he shall so state, such statement operating as a denial. Averments other than of value or amount of damage, if not denied, shall be deemed confessed, except

[a] See Equity Rule 29, with Annotations, in Appendix, post.
[b] See Equity Rule 30, with Annotations, in Appendix, post.

as against an infant, lunatic, or other person *non compos* and not under guardianship. The answer may be amended, by leave of the court or judge, upon reasonable notice, so as to put any averment in issue, when justice requires it. The answer may state as many defenses, in the alternative, regardless of consistency, as the defendant deems essential to his defense.

"The answer must state in short and simple form any counterclaim arising out of the transaction which is the subject-matter of the suit, and may, without cross bill, set out any set-off or counterclaim against the plaintiff which might be the subject of an independent suit in equity against him, and such set-off or counterclaim, so set up, shall have the same effect as a cross suit, so as to enable the court to pronounce a final judgment in the same suit both on the original and cross claims."

§ 974. Form of Answer. Equity Rule 18 [c] provides: "Unless otherwise prescribed by statute or these rules, the technical forms of pleading in equity are abolished." Under Equity Rule 24, the answer is required to be "signed individually by one or more solicitors of record, and such signatures shall be considered as a certificate by each solicitor that he has read the pleading so signed by him; that upon the instruction laid before him regarding the case there is good ground for the same; that no scandalous matter is inserted in the pleading; and that it is not interposed for delay." There is no provision as to verification, but undoubtedly if the answer contains a counterclaim or set-off which seeks special relief pending the suit, the counterclaim or set-off should be verified by anology to the fifth subdivision of Rule 25, providing: "If special relief pending the suit be desired, the bill should be verified by the oath of the plaintiff or someone having knowledge of the facts upon which such relief is asked." In case the pleading is verified, Equity Rule 36 provides for the officers before whom the same may be done, as follows: "Every pleading which is required to be sworn to by statute, or these rules, may be verified before any justice or judge of any court of the United States, or of any state or territory, or of the District of Columbia, or any clerk

[c] See Equity Rule 18, with Annotations, in Appendix, post.

of any court of the United States, or of any territory, of the District of Columbia, or any notary public." Equity Rule 78 [d] provides for an affirmation in lieu of an oath where the party has conscientious scruples against taking an oath.

§ 975. Discovery.

Pt. Equity Rule 58.[e] ". . . the defendant at any time after filing his answer, and not later than twenty-one days after the joinder of issue, . . . may file interrogatories in writing for the discovery by the opposite party or parties of facts and documents material to the . . . defense of the cause, with a note at the foot thereof, stating which of the interrogatories each of the parties is required to answer. . . ."

Further on this subject will be found under the chapter 35 on "Trial—Equity Suits," sections 1006 to 1011 hereafter.

§ 976. Amendments. By Equity Rule 30,[f] above quoted, it is provided that "the answer may be amended by leave of the court or judge upon reasonable notice, so as to put any averment in issue when justice requires it."

By Equity Rule 33,[h] an answer setting up an affirmative defense, set-off, or counterclaim, "if found insufficient but amendable, the court may allow an amendment upon terms or strike out the matter."

§ 977. Supplemental Answer.

Equity Rule 34.[i] "Upon application of either party, the court or judge, may, upon reasonable notice and such terms as are just, permit him to file and serve a supplemental pleading, alleging material facts occurring after his former pleading, or of which he was ignorant when it was made, including the judgment or decree of a competent court rendered after the commencement of the suit, determining the matters in controversy or a part thereof."

[d] See Equity Rule 78, with Annotations, in Appendix, post.
[e] See Equity Rule 58, with Annotations, in Appendix, post.
[f] See Equity Rule 30, with Annotations, in Appendix, post.
[h] See Equity Rule 33, with Annotations, in Appendix, post.
[i] See Equity Rule 34, with Annotations, in Appendix, post.

§ 978. Attacks upon Answer. Further and particular statement may be required.

Equity Rule 20.[j] "A further and better statement of the nature of the claim or defense, or further and better particulars of any matter stated in any pleading, may in any case be ordered, upon such terms, as to costs and otherwise, as may be just."

Redundant, impertinent, or scandalous matter may be stricken out.

Equity Rule 21.[k] "The right to except to bills, answers, and other proceedings for scandal or impertinence shall not obtain, but the court may, upon motion or its own initiative, order any redundant, impertinent or scandalous matter stricken out, upon such terms as the court shall think fit."

The sufficiency of the defense may be tested by a motion to strike out.

Equity Rule 33.[l] "Exceptions for insufficiency of an answer are abolished. But if an answer set up an affirmative defense, set-off, or counterclaim, the plaintiff may, upon five days' notice, or such further time as the court may allow, test the sufficiency of the same by motion to strike out. If found insufficient but amendable the court may allow an amendment upon terms, or strike out the matter."

§ 979. Reply—When Required—When Cause at Issue.

Equity Rule 31.[m] "Unless the answer assert a set-off or counterclaim, no reply shall be required without special order of the court or judge, but the cause shall be deemed at issue upon the filing of the answer, and any new or affirmative matter therein shall be deemed to be denied by the plaintiff. If the answer include a set-off or counterclaim, the party against whom it is asserted shall reply within ten days after the filing of the answer, unless a longer time be

j See Equity Rule 20, with Annotations, in Appendix, post.
k See Equity Rule 21, with Annotations, in Appendix, post.
l See Equity Rule 33, with Annotations, in Appendix, post.
m See Equity Rule 31, with Annotations, in Appendix, post.

allowed by the court or judge. If the counterclaim is one which affects the rights of other defendants, they or their solicitors shall be served with a copy of the same within ten days from the filing thereof, and ten days shall be accorded to such defendants for filing a reply. In default of a reply, a decree *pro confesso* on the counterclaim may be entered as in default of an answer to the bill."

§ 980. Counterclaim and Set-off.

2d Par. Equity Rule 30.[n] "The answer must state in short and simple form any counterclaim arising out of the transaction which is the subject-matter of the suit, and may, without cross bill, set out any set-off or counterclaim against the plaintiff which might be the subject of an independent suit in equity against him, and such set-off or counterclaim so set up shall have the same effect as a cross suit, so as to enable the court to pronounce a final judgment in the same suit, both on the original and cross claims."

This short paragraph is the only Federal authority that recognizes counterclaims and set-offs, for prior to the adoption of the new equity rules the only relief that could be sought in an answer was the dismissal of the bill. Affirmative matter could not be set up in the answer, but was required to be pleaded by cross bill. The Federal decisions relating to Federal procedure, therefore, do not define counterclaims and set-offs, the Federal Statutes do not provide for them, nor do the new rules except that above quoted, and Rule 31 providing for replies to counterclaims or set-offs.

The rule designates two kinds of counterclaims: (1) Those "arising out of the transaction which is the subject-matter of the suit;" (2) those "which might be the subject of an independent suit in equity against" plaintiff.

The second kind of a counterclaim is broad enough to include matters "connected with the subject of the action" though not necessarily "arising out of the transaction which is the subject-matter of the suit." It is broader than and includes that kind of cross claim which is known as a "set-off," which term seems to be merely an alternative expression for "counterclaim."

[n] See Equity Rule 30, with Annotations, in Appendix, post.

There is a large group of states which make a distinction between set-off and counterclaim, the set-off being used to set out independent or external matters as the subject of a cross claim, while in another group of states, the term "set-off" is not used, but there are two kinds of counterclaims, the second kind of which correspond to the "set-off" above mentioned.[1] That "set-off" is merely an alternative term for "counterclaim" is borne out by the fact that the rules always use these terms in the alternative with the disjunctive "or." In Rule 30, "set out any set-off or counterclaim," and again, "and such set-off or counterclaim." In Rule 31, "unless the answer asserting set-off or counterclaim," and again, "if the answer include a set-off or counterclaim," and the rule also provides for a decree *pro confesso* on the counterclaim, but does not mention such a decree in connection with set-off.

§ 981. Set-off or Counterclaim Subject of Independent Equity Suit against Plaintiff. Equity Rule 30[o] provides that the answer "may, without cross bill, set out any set-off or counterclaim against the plaintiff which might be the subject of an independent suit in equity against him." Does this set-off or counterclaim include other matters than that which formerly could have been set up by cross bill?

The cross bill under the former practice has been confined to matters germane to the purposes of the bill. It was required to be connected with it in some way. The use of the term "set-off" indicates separate unconnected extrinsic cause of action, and would seem to be much broader.

§ 982. Cross Bill not Provided for in Rules. The only reference in the index of the equity rules to the cross bill reads as follows: "Cross-bill counterclaim to be stated in answer, and not by." The only reference in the rules to the cross bill is in Equity Rule 30, providing that the defendant "may, *without cross bill*, set out any set-off or counterclaim against the plaintiff which might be the subject of an independent suit in equity against

[1] Pomeroy's Code Remedies (4th ed.) p. 835.

[o] See Equity Rule 30, with Annotations, in Appendix, post.

him." The Federal statutes and the new equity rules do not provide for the procedure in the event of the filing of a cross bill, and the evident intent is that a counterclaim or set-off should be used, instead of cross bill, where this is possible.

If there is any doubt as to whether or not defensive matter, which formerly could have been set up by cross bill, comes under the provisions of the new rule, the safer practice, until this matter has been definitely determined, is to plead the defense both as a counterclaim and by cross bill, assuming that the procedure on the cross bill will be analogous to the new practice with reference to original bills.

The new counterclaim and set-off seem to cover all or almost all which could have been pleaded by the cross bill under the former practice. The purposes of the cross bill were as follows:

1. *Affirmative relief.* As the only prayer of the answer under the old practice was for dismissal of the bill, the cross bill was the only method of obtaining affirmative relief. The new rule provides that the "set-off or counterclaim so set up *shall have the same effect as a cross suit,* so as to enable the court to pronounce a final judgment in the same suit both on the original and cross claims." There can be no doubt but that under Rule 30, the reformation of an instrument sued upon may be sought by the defendant on the ground of mistake or fraud, or that the defendant could set up usury, or pray that an agreement be surrendered which is sought to be specifically enforced. In fact, these are matters arising out of the transaction which is the subject-matter of the suit, and *must* be set out in the answer, and not by cross bill.

2. *Discovery.* The cross bill is no longer necessary for discovery in aid of an answer, as Equity Rule 58 now provides for the filing of interrogatories in writing for the discovery, by the opposite party or parties, of facts and documents material to the support or the defense of the cause.

This was also true under the old rules, but the old rules by old Equity Rule 72 recognized the right of defendant to obtain discovery by cross bill by requiring an answer to the original bill before the plaintiff was compelled to answer the cross bill. Old Equity Rule 72 is now abolished, and there is no recognition of

the cross bill in the new rules except the permission to set up matters *without* a cross bill.

3. *To set up new matter arising after issue joined.* Under the old practice it was not possible to set up new matter by a supplemental answer. Old Rule 46 as to supplemental pleading referred to the bill only. Therefore it was necessary to set up this new matter by cross bill.

This is no longer necessary, because the new Equity Rule 34 provides for a supplemental answer as well as a supplemental bill.

> *Equity Rule 34.*[p] "Upon application of either party the court or judge may, upon reasonable notice and such terms as are just, permit him to file and serve a supplemental pleading, alleging material facts occurring after his former pleading, or of which he was ignorant when it was made, including the judgment or decree of a competent court rendered after the commencement of the suit determining the matters in controversy or a part thereof."

4. *Means of defense.* The cross bill is no longer necessary to set up matters which could not be pleaded in the answer, because the answer is now of such a broad character that defensive matters which were formerly barred may now be included under the provision of Equity Rule 30, which reads: "The answer may state as many defenses, in the alternative, regardless of consistency, as the defendant deems essential to his defense." Hence, a discharge in bankruptcy; an agreement or conveyance, or matters purely legal, could be set up in an original or a supplemental answer.

5. *To settle conflicting claims between the defendants.* The new rule provides for two distinct kinds of counterclaims: (1) "Any counterclaim arising out of the transaction which is the subject-matter of the suit;" (2) "any set-off or counterclaim against the plaintiff which might be the subject of an independent suit in equity against him."

The second kind of counterclaim would not cover conflicting claims among the defendants themselves, as the rule specifically states that the set-off or counterclaim is "against the plaintiff."

[p] See Equity Rule 34, with Annotations, in Appendix, post.

Equity Rule 31 provides: "If the answer includes a set-off or counterclaim, the party against whom it is asserted shall reply within ten (10) days after the filing of the answer, unless a longer time be allowed by the court or judge. The party mentioned is evidently the plaintiff, as other defendants ought to be given notice of a counterclaim affecting them before being required to reply to same."

The first kind of counterclaim mentioned, one, "arising out of the transaction which is the subject-matter of the suit," evidently may affect the rights of others than the plaintiff, for Equity Rule 31 provides with respect to this class of counterclaim, "if the counterclaim is one which affects the rights of other defendants, they or their solicitors shall be served with a copy of the same within ten (10) days from the filing thereof, and ten (10) days, shall be accorded to such defendant for filing a reply."

It would, therefore, seem that conflicting claims between the defendants arising out of the transaction which is the subject-matter of the suit could be litigated by counterclaim. If, however, there are conflicting claims between the defendants which do not affect plaintiff and which do not arise out of the transaction, which is the subject-matter of the suit, but the determination of which is necessary for a complete decree between all the parties or connected with the subject-matter of the bill, then a cross bill would undoubtedly lie.

6. *For a complete determination of all matters affected by the bill.* That this is the intent of the rule as is indicated by the language that "such set-off or counterclaim, so set up, *shall have the same effect as a cross suit,* so as to enable the court to pronounce a final judgment in the same suit *both* on the original and cross claims."

§ 983. Effect of Failure to Plead Counterclaim or Set-off. The rule provides that "the answer *must state* . . . any counterclaim arising out of the transaction which is the subject-matter of the suit." This would seem to preclude setting up such matter thereafter, as under the rule stated in this form, the issues would necessarily be involved and therefore *res adjudicata.*

The rule provides also that the "answer *may,* without cross bill, set out any set-offs or counterclaims against the plaintiff which might be the subject of an independent suit in equity against him." The use of the verb in the permissive form would indicate that as to such matters the defendant would not afterward be barred from proceeding by an independent suit in equity on his claim. It has been generally held that, in the absence of express statutory provisions to the contrary, the failure to plead these matters does not bar them, and no such effect is given by the statutes authorizing the counterclaim. In code states the defendant may elect to set up his cross demand as a counterclaim, or may not do so, but may set up and maintain a separate action upon it.[2]

[2] Pomeroy's Code Remedies, p. 938, cases cited.

CHAPTER 35.

TRIAL—EQUITY SUITS.

Sec.
1000. In General.
1001. Depositions after Issue and Affidavits of Expert Witnesses in Patent and Trademark Cases.
1002. Mode of Proof.
1003. Rulings on Admissibility of Evidence.
1004. Appointment of a Stenographer.
1005. Affidavits of Expert Witnesses—Patent and Trademark Cases.
1006. Interrogatories for Discovery of Facts and Documents.
1007. Interrogatories to be Answered by an Officer of a Corporation Party.
1008. Interrogated Party Entitled to Copies of Interrogatories.
1009. Answers to Interrogatories—Time for.
1010. Enforcing Answers to Interrogatories.
1011. Demand on Party to Admit Execution on Genuineness of Documents, etc.
1012. Pleading and Proof in Actions for Infringement.

§ 1000. In General. Under Equity Rule 46,[a] the trial of an equity suit, like that of an action at law, is by producing the witnesses in open court, unless under Equity Rule 47[b] depositions have been taken for good and exceptional cause for departing from the general rule, or, under Equity Rule 54[c] after the cause was at issue, depositions were taken under §§ 863, 865, and 867, R. S. Chapter 16 treats of depositions.

§ 1001. Depositions after Issue and Affidavits of Expert Witnesses in Patent and Trademark Cases. Under Equity Rule 47[d] depositions may be taken when allowed by statute or for good and exceptional cause for departing from the general rule.

[a] See Equity Rule 46, with Annotations, in Appendix, post also § 1003, infra.
[b] See Equity Rule 47, with Annotations, in Appendix, post.
[c] See Equity Rule 54, with Annotations, in Appendix, post.
[d] See Equity Rule 47, with Annotations, in Appendix, post.

Those of the plaintiff within sixty days from the time the cause is at issue; of the defendant within thirty days from the expiration for filing plaintiff's depositions; rebutting depositions by either party within twenty days after the time for taking original depositions expires.

Under Equity Rule 54,[e] if the cause is at issue, depositions may be taken as provided by §§ 863, 865, 866, and 867, Revised Statutes.

In cases involving the validity or scope of a patent or trademark, the testimony in chief of expert witnesses as to matters of opinion may be set forth in affidavits, under Equity Rule 48,[f] those of plaintiff within forty days after the causes at issue, defendant within twenty days after plaintiff's time has expired, and rebutting affidavits within fifteen days after the expiration of the time for filing original affidavits.

§ 1002. Mode of Proof.

§ 862, R. S., Comp. Stat. 1901, p. 661, 3 F. S. A. 8, Rose's Code, § 1036. "The mode of proof in causes of equity . . . shall be according to rules now or hereafter prescribed by the Supreme Court, except as herein specially provided."

In chapter 14, on "Evidence," will be found quoted the statutory provisions permitting the admission of copies of documents, for restoring laws, judgments, and records and admission of same in evidence, and with respect to acts of the state legislatures, records, and judicial proceedings of state courts, their authentication and proof and other matters of like character.

Provisions as to subpœnas and other matters relating to witnesses are set out in chapter 15 above. Depositions are treated in chapter 16 above.

§ 1003. Rulings on Admissibility of Evidence.

Equity Rule 46.[g] "In all trials in equity the testimony

[e] See Equity Rule 54, with Annotations, in Appendix, post.
[f] See Equity Rule 48, with Annotations, in Appendix, post, also § 1005, infra.
[g] See Equity Rule 46, with Annotations, in Appendix, post.

of witnesses shall be taken orally in open court, except as otherwise provided by statute or these rules. The court shall pass upon the admissibility of all evidence offered as in actions at law. When evidence is offered and excluded, and the party against whom the ruling is made excepts thereto at the time, the court shall take and report so much thereof, or make such a statement respecting it, as will clearly show the character of the evidence, the form in which it was offered, the objection made, the ruling, and the exception. If the appellate court shall be of opinion that the evidence should have been admitted, it shall not reverse the decree unless it be clearly of opinion that material prejudice will result from an affirmance, in which event it shall direct such further steps as justice may require."

§ 1004. Appointment of a Stenographer.

Equity Rule 50.[h] "When deemed necessary by the court or officer taking testimony, a stenographer may be appointed who shall take down testimony in shorthand and, if required, transcribe the same. His fee shall be fixed by the court and taxed ultimately as costs. The expense of taking a deposition, or the cost of a transcript, shall be advanced by the party calling the witness or ordering the transcript."

§ 1005. Affidavits of Expert Witnesses—Patent and Trade-mark Cases.

Equity Rule 48.[i] "In a case involving the validity or scope of a patent or trade mark, the district court may, upon petition, order that the testimony in chief of expert witnesses, whose testimony is directed to matters of opinion, be set forth in affidavits and filed as follows: Those of the plaintiff within forty days after the cause is at issue; those of the defendant within twenty days after plaintiff's time has expired; and rebutting affidavits within fifteen days after the expiration of the time for filing original affidavits. Should the opposite party desire the production of any affiant for cross-examination, the court or judge shall, on motion, direct that said cross-examination and any re-examination take place before the court upon the trial, and unless the affiant is produced and submits to cross-examination in compli-

[h] See Equity Rule 50, with Annotations, in Appendix, post.
[i] See Equity Rule 48, with Annotations, in Appendix, post.

ance with such direction, his affidavit shall not be used as evidence in the cause."

§ 1006. Interrogatories for Discovery of Facts and Documents.

Pt. Equity Rule 58.[j] "The plaintiff at any time after filing the bill and not later than twenty-one days after the joinder of issue, and the defendant at any time after filing his answer and not later than twenty-one days after the joinder of issue, and either party at any time thereafter by leave of the court or judge, may file interrogatories in writing for the discovery by the opposite party or parties of facts and documents material to the support or defense of the cause, with a note at the foot thereof stating which of the interrogatories each of the parties is required to answer. But no party shall file more than one set of interrogatories to the same party without leave of the court or judge."

§ 1007. Interrogatories to be Answered by an Officer of a Corporation Party.

Pt. Equity Rule 58.[k] ". . . If any party to the cause is a public or private corporation, any opposite party may apply to the court or judge for an order allowing him to file interrogatories to be answered by any officer of the corporation, and an order may be made accordingly for the examination of such officer as may appear to be proper upon such interrogatories as the court or judge shall think fit. . . ."

§ 1008. Interrogated Party Entitled to Copies of Interrogatories.

Pt. Equity Rule 58.[l] ". . . Copies shall be filed for the use of the interrogated party, and shall be sent by the clerk to the respective solicitors of record, or to the last-known address of the opposite party if there be no record solicitor. . . ."

§ 1009. Answers to Interrogatories—Time for.

Pt. Equity Rule 58.[m] ". . . Interrogatories shall be

j See Equity Rule 58, with Annotations, in Appendix, post.
k See Equity Rule 58, with Annotations, in Appendix, post.
l See Equity Rule 58, with Annotations, in Appendix, post.
m See Equity Rule 58, with Annotations, in Appendix, post.

answered, and the answers filed in the clerk's office, within fifteen days after they have been served, unless the time be enlarged by the court or judge. Each interrogatory shall be answered separately and fully, and the answers shall be in writing, under oath, and signed by the party or corporate officer interrogated. Within ten days after the service of interrogatories, objections to them, or any of them, may be presented to the court or judge, with proof of notice of the purpose so to do, and answers shall be deferred until the objections are determined, which shall be at as early a time as is practicable. In so far as the objections are sustained, answers shall not be required. . . ."

§ 1010. Enforcing Answers to Interrogatories.

Pt. Equity Rule 58.[n] ". . . The court or judge, upon motion and reasonable notice, may make all such orders as may be appropriate to enforce answers to interrogatories or to effect the inspection or production of documents in the possession of either party and containing evidence material to the cause of action or defense of his adversary. Any party failing or refusing to comply with such an order shall be liable to attachment, and shall also be liable, if a plaintiff, to have his bill dismissed, and, if a defendant, to have his answer stricken out and be placed in the same situation as if he had failed to answer. . . ."

§ 1011. Demand on Party to Admit Execution or Genuineness of Documents, etc.

Pt. Equity Rule 58.[o] ". . . By a demand served ten days before the trial, either party may call on the other to admit in writing the execution or genuineness of any document, letter or other writing, saving all just exceptions; and if such admission be not made within five days after such service, the costs of proving the document, letter or writing shall be paid by the party refusing or neglecting to make such admission, unless at the trial the court shall find that the refusal or neglect was reasonable. . . ."

§ 1012. Pleading and Proof in Actions for Infringement.

§ *4920, R. S., Comp. Stat. 1901, p. 3394, 5 F. S. A. 567,*

n See Equity Rule 58, with Annotations, in Appendix, post.
o See Equity Rule 58, with Annotations, in Appendix, post.

Rose's Code, § 1172. "In any action for infringement the defendant may plead the general issue, and having given notice in writing to the plaintiff or his attorney thirty days before, may prove on trial any one or more of the following special matters:

"First. That for the purpose of deceiving the public the description and specification filed by the patentee in the Patent Office was made to contain less than the whole truth relative to his invention or discovery, or more than is necessary to produce the desired effect; or,

"Second. That he had surreptitiously or unjustly obtained the patent for that which was in fact invented by another, who was using reasonable diligence in adapting and perfecting the same; or

"Third. That it has been patented or described in some printed publication prior to his supposed invention or discovery thereof, or more than two years prior to his application for a patent therefor; or,

"Fourth. That he was not the original and first inventor or discoverer of any material and substantial part of the thing patented; or,

"Fifth. That it had been in public use or on sale in this country for more than two years before his application for a patent, or had been abandoned to the public.

"And in notices as to proof of previous invention, knowledge, or use of the thing patented, the defendant shall state the names of the patentees and the dates of their patents, and when granted, and the names and residences of the persons alleged to have invented or to have had the prior knowledge of the thing patented, and where and by whom it had been used; and if any one or more of the special matters alleged shall be found for the defendant, judgment shall be rendered for him, with costs. And the like defenses may be pleaded in any suit in equity for relief against an alleged infringement; and proofs of the same may be given upon like notice in the answer of the defendant, and with the like effect."

CHAPTER 36.

MASTERS IN CHANCERY.

Sec.
1030. Appointment and Compensation.
1031. Reference of Exceptional Matters to.
1032. Notice and Hearing of Reference.
1033. Regulation and Method of Proceedings.
1034. Master's Report—Exceptions—Costs.

§ 1030. Appointment and Compensation.

Equity Rule 68.[a] "The district courts may appoint standing masters in chancery in their respective districts (a majority of all the judges thereof concurring in the appointment), and they may also appoint a master *pro hac vice* in any particular case. The compensation to be allowed to every master shall be fixed by the district court, in its discretion, having regard to all the circumstances thereof, and the compensation shall be charged upon and borne by such of the parties in the cause as the court shall direct. The master shall not retain his report as security for his compensation; but when the compensation is allowed by the court, he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if, upon notice thereof, he does not pay in within the time prescribed by the court."

§ 1031. Reference of Exceptional Matters to.

Equity Rule 59.[b] "Save in matters of account, a reference to master shall be the exception, not the rule, and shall be made only upon a showing that some exceptional condition requires it. When such a reference is made, the party at whose instance or for whose benefit it is made shall cause the order of reference to be presented to the master for a hearing within twenty days succeeding the time when

[a] See Equity Rule 68, with Annotations, in Appendix, post.
[b] See Equity Rule 59, with Annotations, in Appendix, post.

the reference was made, unless a longer time be specially granted by the court or judge; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the costs of the party securing the reference."

§ 1032. Notice and Hearing of Reference.

Equity Rule 60.[c] "Upon every such reference, it shall be the duty of the master, as soon as he reasonably can after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties, or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed *ex parte,* or, in his discretion, to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay, and either party shall be at liberty to apply to the court, or a judge thereof, for an order to the master to speed the proceedings and to make his report, and to certify to the court or judge the reason for any delay."

§ 1033. Regulation and Method of Proceedings.

Equity Rule 62.[d] "The master shall regulate all the proceedings in every hearing before him, upon every reference; and he shall have full authority to examine the parties in the cause, upon oath, touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and other documents applicable thereto; and also to examine on oath, *viva voce,* all witnesses produced by the parties before him, or by deposition, according to the acts of Congress, or otherwise, as here provided; and also to direct the mode in which the matters requiring evidence shall be proved before him; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof and the rights of the parties."

[c] See Equity Rule 60, with Annotations, in Appendix, post.
[d] See Equity Rule 62, with Annotations, in Appendix, post.

Equity Rule 65.[e] "The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or *viva voce,* or in both modes, as the nature of the case may appear to him to require. The evidence upon such examinations shall be taken down by the master, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the court if necessary."

Equity Rule 63.[f] "All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties who shall not be satisfied with the account so brought in shall be at liberty to examine the accounting party *viva voce,* or upon interrogatories, as the master shall direct."

Equity Rule 64.[g] "All affidavits, depositions, and documents which have been previously made, read, or used in the court upon any proceeding in any cause or matter may be used before the master."

§ 1034. Master's Report—Exceptions—Costs.

Equity Rule 61.[h] "In the reports made by the master to the court, no part of any state of facts, account, charge, affidavit, deposition, examination, or answer brought in or used before him shall be stated or recited. But such state of facts, account, charge, affidavit, deposition, examination, or answer shall be identified, and referred to, so as to inform the court what state of facts, account, charge, affidavit, deposition, examination, or answer were so brought in or used."

Equity Rule 66.[i] "The master, as soon as his report is ready, shall return the same into the clerk's office and the day of the return shall be entered by the clerk in the equity docket. The parties shall have twenty days from the time of the filing of the report to file exceptions thereto, and if no exceptions are within that period filed by either party, the report shall stand confirmed. If exceptions are filed, they shall stand for hearing before the court, if then in

e See Equity Rule 65, with Annotations, in Appendix, post.
f See Equity Rule 63, with Annotations, in Appendix, post.
g See Equity Rule 64, with Annotations, in Appendix, post.
h See Equity Rule 61, with Annotations, in Appendix, post.
i See Equity Rule 66, with Annotations, in Appendix, post.

session, or, if not, at the next sitting held thereafter, by adjournment or otherwise."

Equity Rule 67.[1] "In order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled, shall, for every exception overruled, pay five dollars costs to the other party, and for every exception allowed shall be entitled to the same costs."

[1] See Equity Rule 67, with Annotations, in Appendix, post.

CHAPTER 37.

RECEIVERS AND INJUNCTIONS.

Sec.

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§ 1051. Persons Ineligible to Act as Receivers.

§ 68, Judicial Code,[a] *36 Stat. at L. 1105, Comp. St. 1911, p. 155, 1912 Supp. F. S. A. v. 1, p. 159.* "No clerk

[a] For Annotations of this § 68, Judicial Code, see footnote [p], ante, our § 41.

of a district court of the United States or his deputy shall be appointed a receiver or master in any case, except where the judge of said court shall determine that special reasons exist therefor, to be assigned in the order of appointment."

Pt. § 20, Act May 28, 1896, ch. 252, Comp. St. 1901, p. 501, 4 F. S. A. 81. "It shall not be lawful to appoint any of the officers named in this section (marshal, deputy marshal, attorney, or assistant attorney of any district; jury commissioner, marshal's clerk, bailiff, crier, juror, janitor of a public building, civil or military employee of the government, or clerk or employee of any United States justice or judge) receiver or receivers in any case or cases now pending or that may hereafter be brought in the courts of the United States."

§ 1052. Receivers Manage Property According to State Laws.

§ 65, Judicial Code,[b] *36 Stat. at L. 1104, Comp. St. 1911, p. 155, 1912 Supp. F. S. A. v. 1, p. 159.* "Whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the state in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall wilfully violate any provision of this section shall be fined not more than three thousand dollars, or imprisoned not more than one year, or both."

§ 1052a. Rights of Employees on Properties in Hands of Receivers to be Heard on Terms of Employment.

§ 9, Act July 15, 1913, ch. 6, 38 Stat. at L. 107, 108. "That whenever receivers appointed by a Federal court are in the possession and control of the business of employers covered by this act the employees of such employers shall have the right to be heard through their representatives in such court upon all questions affecting the terms and conditions of

[b] Re-enacting 35 Stat. at L. 436, Comp. St. 1901, p. 582, 4 F. S. A. 386, which section has been repealed by § 297, Judicial Code. In general, Erb v. Morasch, 177 U. S. 584, 44 L. ed. 897, 20 Sup. Ct. Rep. 819.

their employment; and no reduction of wages shall be made by such receivers without the authority of the court therefor, after notice to such employees, said notice to be given not less than twenty days before the hearing upon the receivers' petition or application, and to be posted upon all customary bulletin boards along or upon the railway or in the customary places on the premises of employers covered by this act."

§ 1053. Receivers—When Suable without Leave of Court.

§ 66, Judicial Code,[c] *36 Stat. at L. 1104, Comp. St. 1911, p. 155, 1912 Supp. F. S. A. p. 159.* "Every receiver or manager of any property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court of which such manager or receiver was appointed so far as the same may be necessary to the end of justice."

§ 1054. Power of Federal Courts to Issue Writs—In General.

Pt. § 262, Judicial Code,[d] *36 Stat. at L. 1162, Comp. St. 1911, p. 235, 1912 Supp. F. S. A. v. 1, p. 241.* ". . . The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

§ 1055. Injunctions—When may be Granted by Justice or Judge Instead of by Court.

§ 264, Judicial Code,[e] *36 Stat. at L. 1162, Comp. St.*

[c] Re-enacting 25 Stat. at L. 436, Foster's Fed. Prac. (4th ed.) pp. 14, 36, 826, 830, Comp. St. 1901, p. 582, 4 F. S. A. 387, which statute is repealed by § 297, Judicial Code. In general, see Smith v. Jones Lumber & Mercantile Co. et al. 200 Fed. 647.

[d] Drawn from § 716, R. S., Rose's Code, § 841, Foster's Fed. Prac. pp. 79, 1156–74–80–81–96, 1248, Comp. St. 1901, p. 580, 4 F. S. A. 498, and § 12 of act of March 3, 1891, ch. 517, 26 Stat. at L. 829, Rose's Code, § 842, 4 F. S. A. 430. § 716, R. S., is repealed by § 297, Judicial Code. In general, United States v. McHie et al. 196 Fed. 586.

[e] Drawn from § 719, R. S., Rose's Code, § 1111, Foster's Fed. Prac. (4th ed.) pp. 644, 681, 736, 2015, Comp. St. 1901, p. 581, 4 F. S. A. 508, which section is repealed by § 297, Judicial Code.

1911, p. 236, 1912 Supp. F. S. A. v. 1, p. 241. "Writs of injunction may be granted by any justice of the Supreme Court in cases where they might be granted by the Supreme Court; and by any judge of a district court in cases where they might be granted by such court. But no justice of the Supreme Court shall hear or allow any application for an injunction or restraining order in any cause pending in the circuit to which he is allotted, elsewhere than within such circuit, or at such place outside of the same as the parties may stipulate in writing, except when it cannot be heard by the district judge of the district. In case of the absence from the district of the district judge, or of his disability, any circuit judge of the circuit in which the district is situated may grant an injunction or restraining order in any case pending in the district court, where the same might be granted by the district judge."

§ 1056. Temporary Restraining Order—Bond.

§ *263, Judicial Code,*[f] *36 Stat. at L. 1162, Comp. St. 1911, p. 235, 1912 Supp. F. S. A. v. 1, p. 241.* "Whenever notice is given of a motion for an injunction out of a district court, the court or judge thereof may, if there appears to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion; and such order may be granted with or without security, in the discretion of the court or judge."

§ 1057. Preliminary Injunctions and Temporary Restraining Orders—Notice.

Pt. Equity Rule 73.[g] "No preliminary injunction shall be granted without notice to the opposite party. Nor shall any temporary restraining order be granted without notice to the opposite party, unless it shall clearly appear from specific facts, shown by affidavit or by the verified bill, that immediate and irreparable loss or damage will result to the applicant before the matter can be heard on notice. . . ."

[f] Re-enacting § 718, R. S., Rose's Code, § 1114, Foster's Fed. Prac. (4th ed.) pp. 426, 643, 733, 735, 739, Comp. St. 1901, p. 580, 4 F. S. A. 508, which section is repealed by § 297, Judicial Code. In general, United States v. Weber et al. 114 Fed. 950.

[g] See Equity Rule 73, with Annotations, in Appendix, post.

§ 1058. Procedure Where Order Granted without Notice.

Pt. Equity Rule 73.[h] ". . . In case a temporary restraining order shall be granted without notice, in the contingency specified, the matter shall be made returnable at the earliest possible time, and in no event later than ten days from the date of the order, and shall take precedence of all matters, except older matters of the same character. When the matter comes up for hearing the party who obtained the temporary restraining order shall proceed with his application for a preliminary injunction, and if he does not do so the court shall dissolve his temporary restraining order. . . ."

§ 1059. Dissolution and Modification of Temporary Restraining Orders. In addition to the penalty of dissolution prescribed by the preceding section, a temporary restraining order may be dissolved or modified in accordance with the following rule:—

Pt. Equity Rule 73.[i] ". . . Upon two days' notice to the party obtaining such temporary restraining order, the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require. . . ."

§ 1060. Order to be Filed Forthwith.

Pt. Equity Rule 73.[j] ". . . Every temporary restraining order shall be forthwith filed in the clerk's office."

§ 1061. Injunction Pending Appeal.

Equity Rule 74.[k] "When an appeal from a final decree, in any equity suit, granting or dissolving an injunction, is allowed by a justice or a judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending, modifying or restoring the injunction during the pendency of the appeal, upon

[h] See Equity Rule 73, with Annotations, in Appendix, post.
[i] See Equity Rule 73, with Annotations, in Appendix, post.
[j] See Equity Rule 73, with Annotations, in Appendix, post.
[k] See Equity Rule 74, with Annotations, in Appendix, post.

such terms, as to bond or otherwise, as he may consider proper for the security of the rights of the opposite party."

§ 1062. When Proceedings in State Courts may be Stayed.

§ 265, Judicial Code,[l] *36 Stat. at L. 1162, Comp. St. 1911, p. 236, 1912 Supp. F. S. A. 242.* "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

§ 1063. Injunction to Restrain Enforcement of State Laws on Ground of Unconstitutionality—By Whom Granted.

First Pt. § 266, Judicial Code,[m] *36 Stat. at L. 1162, Comp. St. 1911, p. 236, 1912 Supp. F. S. A. v. 1, p. 242, as amended by act March 4, 1913, ch. 160, 37 Stat. at L. 1013.* "No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a state by restraining the action of any officer of such state in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such state, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court, or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other

[l] Re-enacting § 720, R. S., Rose's Code, § 20, Foster's Fed. Prac. (4th ed.) pp. 425, 694, 727, 1810, Comp. St. 1901, p. 581, 4 F. S. A. 509, which section is repealed by § 297, Judicial Code. In general, The San Pedro, 223 U. S. 365, 56 L. ed. 473, 32 Sup. Ct. Rep. 275, Ann. Cas. 1913 D. 1221.

[m] Re-enacting § 17 of the act of June 18, 1910, ch. 309, 36 Stat. at L. 557, which section is repealed by § 297, Judicial Code. In general, Ex parte Young, 209 U. S. 123, 52 L. ed. 714, 28 Sup. Ct. Rep. 441, 13 L.R.A.(N.S.) 932, 14 Ann. Cas. 764.

judges: *Provided, however,* That one of such three judges shall be a justice of the Supreme Court, or a circuit judge."

Last Pt. § 266 added by amendment of March 4, 1913, ch. 160. "It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the state having jurisdiction thereof under the laws of such state, to enforce such statute or order, accompanied by a stay in such state court of proceedings under such statute or order pending the determination of such suit by such state court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the state. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the state, that the suit in the state courts is not being prosecuted with diligence and good faith."

§ 1064. Hearing of Application in Such Cases—Notice.

Pt. § 266, Judicial Code,[n] *36 Stat. at L. 1162, Comp. St. 1911, p. 236, 1912 Supp. F. S. A. v. 1, p. 242.* "Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the state, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for."

[n] For Annotation of this § 266, Judicial Code, see footnote [m], next above, our § 1063.

§ 1065. Appeal from Order Granting or Denying Injunction in Such Cases.

Pt. § 266, Judicial Code,[o] *36 Stat. at L. 1162, Comp. St. 1911, p. 237, 1912 Supp. F. S. A. v. 1, p. 242.* "An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case."

§ 1066. Enforcement of Injunction.

Equity Rule 7.[p] "The process of subpœna shall constitute the proper mesne process in all suits of equity, in the first instance, to require the defendant to appear and answer the bill; and, unless otherwise provided in these rules or specially ordered by the court, a writ of attachment and, if the defendant cannot be found, a writ of sequestration, or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court."

Equity Rule 8.[q] "Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution, in the form used in the district court in suits at common law in actions of assumpsit. If the decree be for the performance of any specific act, as for example, for the execution of a conveyance of land or the delivering up of deeds or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound, without further service, to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the court, or a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found a writ of sequestration shall issue against his estate, upon the return

[o] For Annotation of this § 266, Judicial Code, see footnote [m], our § 1063, above.

[p] See Equity Rule 7, with Annotations, in Appendix, post.

[q] See Equity Rule 8, with Annotations, in Appendix, post.

of *non est inventus,* to compel obedience to the decree. If a mandatory order, injunction or decree for the specific performance of any act or contract be not complied with, the court or a judge, besides, or instead of, proceedings against the disobedient party for a contempt or by sequestration, may by order direct that the act required to be done, be done, so far as practicable, by some other person appointed by the court or judge, at the cost of the disobedient party, and the act, when so done, shall have like effect as if done by him."

§ 1067. Writs of Ne Exeat—When and by Whom Granted.

§ *261, Judicial Code,*[r] *36 Stat. at L. 1162, Comp. St. 1911, p. 235, 1912 Supp. F. S. A. v. 1, p. 241.* "Writs of ne exeat may be granted by any justice of the Supreme Court, in cases where they might be granted by the Supreme Court; and by any district judge, in cases where they might be granted by the district court of which he is a judge. But no writ of ne exeat shall be granted unless a suit in equity is commenced, and satisfactory proof is made to the court or judge granting the same that the defendant designs quickly to depart from the United States."

§ 1068. Writs of Scire Facias—By What Courts Issuable.

Pt. § 262, Judicial Code,[s] *36 Stat. at L. 1162, Comp. St. 1911, p. 235, 1912 Supp. F. S. A. v. 1, p. 241.* "The Supreme Court and the district courts shall have power to issue writs of scire facias."

§ 1069. Power of Courts to Administer Oaths and Punish for Contempt.

§ *268, Judicial Code,*[t] *36 Stat. at L. 1162, Comp. St. 1911, p. 237, 1912 Supp. F. S. A. v. 1, p. 243.* "The said courts shall have power to impose and administer all necessary oaths,

[r] Re-enacting § 717, R. S., Rose's Code, § 843, Foster's Fed. Prac. (4th ed.) p. 856, Comp. St. 1901, p. 580, 5 F. S. A. 353, which section is repealed by § 297, Judicial Code.

The power to issue this writ lies only in the Supreme Court, the district court and their judges, as it is ancillary to the exercise of original jurisdiction only. In general, Shainwald v. Lewis, 46 Fed. 839.

[s] For Annotation of this § 262, Judicial Code, see footnote [d], ante, our § 1054.

[t] For Annotation of this § 268, Judicial Code, see footnote [a], ante, our § 487.

and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided,* That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts."

§ 1070. Injunction Restraining Receivership Proceedings against National Banks.

§ 5237, R. S., Comp. Stat. 1901, p. 3508, 5 F. S. A. 179, Rose's Code, § 1119. "Whenever an association against which proceedings have been instituted, on account of any alleged refusal to redeem its circulating notes as aforesaid, denies having failed to do so, it may, at any time within ten days after it has been notified of the appointment of an agent, as provided in section fifty-two hundred and twenty-seven, apply to the nearest circuit, or district, or territorial court of the United States to enjoin further proceedings in the premises; and such court, after citing the Comptroller of the Currency to show cause why further proceedings should not be enjoined, and after the decision of the court or finding of a jury that such association has not refused to redeem its circulating notes, when legally presented in the lawful money of the United States, shall make an order enjoining the Comptroller, and any receiver acting under his direction, from all further proceedings on account of such alleged refusal."

§ 1071. No Interlocutory Injunction against National Banks in State Courts.

Pt. § 5242, R. S., Comp. Stat. 1901, p. 3517, 5 F. S. A. 188. "No . . . injunction . . . shall be issued against such association (national bank) or its property before final judgment in any suit, action, or proceeding in any state, county, or municipal court."

§ 1072. Tax Assessment or Collection may not be Enjoined.

§ 3224, R. S., Comp. Stat. 1901, p. 2088, 3 F. S. A. 600.

"No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court."

This section applies only to Federal taxation,[1] and it is doubtful, inasmuch as it is contained in that part of the Revised Statutes relating to internal revenue, whether it applies to other forms of taxation.

§ 1073. Injunctions on Distress Warrant against Officer for Failure to Account for Public Moneys—Procedure.

§ *3636, R. S., Comp. Stat. 1901, p. 2421, 6 F. S. A. 559.*

"Any person who considers himself aggrieved by any warrant of distress issued under the foregoing provisions may prefer a bill of complaint to any district judge of the United States, setting forth therein the nature and extent of the injury of which he complains; and thereupon the judge may grant an injunction to stay proceedings on such warrant altogether, or for so much thereof as the nature of the case requires. But no injunction shall issue till the party applying for it gives bond, with sufficient security, in a sum to be prescribed by the judge, for the performance of such judgment as may be awarded against him; nor shall the issuing of such injunction in any manner impair the lien produced by the issuing of the warrant. And the same proceedings shall be had on such injunction as in other cases, except that no answer shall be necessary on the part of the United States; and if, upon dissolving the injunction, it appears to the satisfaction of the judge that the application for the injunction was merely for delay, the judge may add to the lawful interest assessed on all sums found due against the complainant such damages as, with such lawful interest, shall not exceed the rate of ten per centum a year. Such injunction may be granted or dissolved by the district judge either in or out of court."

§ 1074. Procedure upon Refusal to Grant, or on Dissolution of Such Injunction.

§ *3637, R. S., Comp. Stat. 1901, p. 2421, 6 F. S. A. 560.*

"When the district judge refuses to grant an injunction to

1 Shelton v. Platt, 139 U. S. 597, 35 L. ed. 273, 11 Sup. Ct. Rep. 646; Schulenberg Co. v. Hayward, 20 Fed. 422; State R. R. Tax Cases, 92 U. S. 575, 23 L. ed. 663.

stay proceedings on a distress warrant, as aforesaid, or dissolves such injunction after it is granted, any person who considers himself aggrieved by the decision in the premises may lay before the circuit justice, or circuit judge of the circuit within which such district lies, a copy of the proceeding had before the district judge; and thereupon the circuit justice or circuit judge may grant an injunction or permit an appeal, as the case may be, if, in his opinion, the equity of the case requires it. The same proceedings, subject to the same conditions, shall be had upon such injunction in the circuit court as are prescribed in the district court."

The appellate powers of the circuit court herein referred to were, by act of 1891, vested in the circuit courts of appeals, and Supreme Court.

CHAPTER 38.

DECREE—EQUITY SUITS.

Sec.
1080. Form of Decree.
1081. Correction of Mistakes—Rehearing.
1082. Enforcement.
1083. Lien of Decree Not Devested by Creation of a New District or Division nor by the Division or Transfer of Territory.

§ 1080. Form of Decree.

Equity Rule 71.[a] *Form of decree.* "In drawing up decrees and orders, neither the bill nor answer nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin, in substance, as follows: 'This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, *viz.:*'" (Here insert the decree or order.)

Equity Rule 10.[b] *Decree for deficiency in foreclosures, etc.* "In suits for the foreclosure of mortgages, or the enforcement of other liens, a decree may be rendered for any balance that may be found due to the plaintiff over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in Rule 8 when the decree is solely for the payment of money."

Pt. Equity Rule 8.[c] ". . . If the decree be for the performance of any special act, as, for example, the execution of a conveyance of land or the delivering up of deeds or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done. . . ."

a See Equity Rule 71, with Annotations, in Appendix, post.
b See Equity Rule 10, with Annotations, in Appendix, post.
c See Equity Rule 8, with Annotations, in Appendix, post.

§ 1081. Correction of Mistakes—Rehearing.

Equity Rule 72.[d] "Clerical mistakes in decrees or decretal orders, or errors arising from any accidental slip or omission, may, at any time before the close of the term at which final decree is rendered, be corrected by order of the court or a judge thereof, upon petition, without the form or expense of a hearing."

Petition for rehearing.

Equity Rule 69.[e] "Every petition for a rehearing shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party or by some other person. No rehearing shall be granted after the term at which the final decree of the court shall have been entered and recorded, if an appeal lies to the circuit court of appeals or the Supreme Court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the court, in the discretion of the court."

§ 1082. Enforcement.

Equity Rule 8.[f] *Enforcement of final decrees.* "Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution, in the form used in the district court in suits at common law in actions of assumpsit. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land or the delivering up of deeds or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound, without further service, to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the court, or a judge thereof, upon motion and affidavit, enlarging the time for the per-

[d] See Equity Rule 72, with Annotations, in Appendix, post.
[e] See Equity Rule 69, with Annotations, in Appendix, post.
[f] See Equity Rule 8, with Annotations, in Appendix, post.

formance thereof. If the delinquent party cannot be found a writ of sequestration shall issue against his estate, upon the return of *non est inventus,* to compel obedience to the decree. If a mandatory order, injunction, or decree for the specific performance of any act or contract be not complied with, the court or a judge, besides, or instead of, proceedings against the disobedient party for a contempt or by sequestration, may by order direct that the act required to be done, be done, so far as practicable, by some other person appointed by the court or judge, at the cost of the disobedient party, and the act, when so done, shall have like effect as if done by him."

Equity Rule 9.[g] *Writ of assistance.* "When any decree or order is for the delivery of possession, upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the clerk of the court."

§ 1083. Lien of Decree Not Devested by Creation of a New District or Division nor by the Division or Transfer of Territory. By § 60, Judicial Code, already quoted and § 170, supra, it is provided that the lien of a decree, etc., shall not be devested by a change of boundaries of any territory, and that a certified copy thereof may be filed in the proper court of the division or district in which the property is located after such transfer, and have the same effect as an original.

[g] See Equity Rule 9, with Annotations, in Appendix, post.

CHAPTER 39.

APPELLATE JURISDICTION OF SUPREME COURT.

Sec.

2000. In General.
2001. Appeals from District Courts Direct to the Supreme Court.
2002. What Constitutes a Question of Jurisdiction.
2003. Rules for Determining the Respective Jurisdiction of the Circuit Courts of Appeal, and the Supreme Court Where the Jurisdiction of the Court Is in Issue.
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2005. Cases Involving the Construction or Application of the United States Constitution.
2006. Constitutionality of United States Law, or Validity or Construction of Treaty Drawn in Question.
2007. State Law or Constitution Claimed to Contravene the Constitution of the United States.
2008. Clauses 3, 4, and 5 of § 238, Judicial Code.
2009. Appeal and Error, Circuit Courts of Appeal to Supreme Court.
2010. Certiorari by Supreme Court in Decisions Otherwise Final in Circuit Courts of Appeal.
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2018. Appeal and Error from the Court of Appeals for the District of Columbia.
2019. Review of Final Decisions of the Court of Appeals of the District of Columbia, by the Supreme Court.
2020. Appeals from Bankruptcy Courts.
2021. Mandamus to Revise and Correct Proceedings in Lower Courts.

§ 2000. In General. The appellate jurisdiction of the Supreme Court is now prescribed by chapter 10, Judicial Code, §§ 236 et seq. It is to be noted that the "appellate jurisdiction con-

ferred by this chapter includes jurisdiction of writs of error as well as appeals, and the most of the sections herein quoted apply alike to appellate procedure in law as well as in equity.

The appellate jurisdiction of the Supreme Court, as herein treated, is divided into two general classes:

1. Appellate jurisdiction over decisions of district courts.
2. Appellate jurisdiction over decisions of circuit court of appeals.

The appellate jurisdiction of the Supreme Court over state courts is treated in chapter 11, under the head of "Removal from State Court of Last Resort." The Supreme Court's appellate jurisdiction over the decrees of the court of claims, the courts of Porto Rico, Hawaii, Alaska, the Philippine Islands, District of Columbia, and bankruptcy courts are treated in the present chapter under separate sections, as is the Supreme Court's power to revise and correct proceedings by mandamus, etc.

§ 2001. Appeals from District Courts Direct to the Supreme Court.

§ *238, Judicial Code,*[a] *36 Stat. at L. 1157, Comp. St. 1911, p. 228, 1912 Supp. F. S. A. 231.* "Appeals and writs of error may be taken from the district courts including the United States district court of Hawaii, direct to the Supreme Court in the following cases:

"(1) In any case in which the jurisdiction of the court is in issue, in which case the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision; (2) from the final sentences and decrees in prize causes; (3) in any case that involves the construction or the application of the Constitution of the United States; (4) in any case in which the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority is drawn in question; (5) and in any case in which the Constitution or law of a state is claimed to be in contravention of the Constitution of the United States."

[a] Drawn from act of March 3, 1891, § 5, ch. 517, 26 Stat. at L. 827, Comp. St. 1901, p. 549, 4 F. S. A. 398, as amended by act of Jan. 20, 1897, ch. 68, 29 Stat. at L. 492, Comp. St. 1901, p. 549, 4 F. S. A. 433, which sections are repealed by § 297, Judicial Code.

In order to maintain jurisdiction in the Supreme Court in the class of cases covered by clause No. 1, of the above quoted section of the Judicial Code, the record must distinctly show, without equivocation, that the court below sends up for consideration the single and definite question of jurisdiction.[1]

No other question except that of jurisdiction can be certified to the Supreme Court under this provision, but it has been held in the case of Commercial Mutual Accident Company v. Davis, 123 U. S. 256, 53 L. ed. 787, 29 Sup. Ct. Rep. 445, that if the case is taken to the Supreme Court on the single ground of jurisdiction and is thus before that court, then the supreme court will pass upon questions of fact where the decision below was erroneous, and may then set aside the judgment of the court below.

§ 2002. What Constitutes a Question of Jurisdiction. The question of jurisdiction may be certified to the Supreme Court upon the following grounds:

(1) Where it appears that process has not been served.[2]

(2) Where a party sues as assignee in a case in which his assignor could not have maintained the action.[3]

(3) In cases of improper removal from a state court.[4]

(4) Whenever the jurisdiction of the court below has been directly attacked (under former equity rules, by plea or demurrer, now by motion to dismiss or by answer).[5]

[1] Arkansas v. Schlierholz, 179 U. S. 600, 45 L. ed. 336, 21 Sup. Ct. Rep. 329; Shields v. Coleman, 157 U. S. 168, 39 L. ed. 660, 15 Sup. Ct. Rep. 570; Chappell v. United States, 160 U. S. 499, 40 L. ed. 510, 16 Sup. Ct. Rep. 397; Mexican C. R. Co. v. Eckman, 187 U. S. 429, 47 L. ed. 245, 23 Sup. Ct. Rep. 211; Cosmopolitan Mining Company v. Walsh, 193 U. S. 460, 48 L. ed. 749, 24 Sup. Ct. Rep. 489; Anglo-American Provision Company v. Davis Provision Co. 191 U. S. 376, 48 L. ed. 228, 24 Sup. Ct. Rep. 93.

[2] Board of Trade v. Hammond Elevator Co. 198 U. S. 424, 49 L. ed. 1111, 25 Sup. Ct. Rep. 740; Remington v. Central P. R. Co. 198 U. S. 95, 49 L. ed. 959, 25 Sup. Ct. Rep. 577; Kendall v. American Automatic Balloon Co. 198 U. S. 477, 49 L. ed. 1133, 25 Sup. Ct. Rep. 768; Davis v. Cleveland C. C. & St. L. R. R. Co. 217 U. S. 157, 54 L. ed. 708, 27 L.R.A.(N.S.) 823, 30 Sup. Ct. Rep. 463, 156 Fed. 775, 84 C. C. A. 453; St. Louis Cotton Compress Co. v. American Cotton Co. 60 C. C. A. 80, 125 Fed. 196.

[3] Barling v. Bank of British N. A. 1 C. C. A. 510, 7 U. S. App. 194, 50 Fed. 261.

[4] Powers v. Chesapeake & Ohio R. R. Co. 169 U. S. 92, 42 L. ed. 673, 18 Sup. Ct. Rep. 264; Kansas City N. W. R. R. Co. v. Zimmerman, 210 U. S. 336, 52 L. ed. 1084, 28 Sup. Ct. Rep. 730.

[5] Davis & R. Bldg. & Mfg. Co. v. Barber, 9 C. C. A. 79, 18 U. S. App. 476,

But the objection that a court of equity has no jurisdiction because of the presence of an adequate remedy at law does not constitute sufficient grounds for certification of the question of jurisdiction to the Supreme Court.[6]

§ 2003. Rules for Determining the Respective Jurisdiction of the Circuit Courts of Appeal, and the Supreme Court Where the Jurisdiction of the Court Is in Issue. Inasmuch as only "the question of jurisdiction alone" may be certified directly to the Supreme Court, under clause (1) of § 238, we must consider the effect of a mixture of questions of jurisdiction, and of issues on the merits of the case.

The Supreme Court, in the case of U. S. v. John, 155 U. S. 109, has laid down six rules, governing the various situations which arise in connection with this situation, as follows:

"(1) If the jurisdiction of the circuit court is in issue, and decided in favor of the defendant, as that disposes of the case, the plaintiff should have the question certified, and take his appeal or writ of error directly to this court. (2) If the question of jurisdiction is in issue, and the jurisdiction sustained, and then judgment or decree is rendered in favor of the defendant on the merits, the plaintiff, who has maintained the jurisdiction, must appeal to the circuit court of appeals, where, if the question of jurisdiction arises, the circuit court of appeals may certify it. (3) If the question of jurisdiction is in issue, and the jurisdiction sustained, and the judgment on the merits is rendered in favor of the plaintiff, then the defendant can elect either to have the question certified, and come directly to this court, or to carry the whole case to the circuit court of appeals, and the question of jurisdiction can be certified by that court. (4) If in the case last supposed the plaintiff has ground of complaint in respect of

60 Fed. 465; Hennessy v. Richardson Drug Co. 189 U. S. 25, 47 L. ed. 697, 23 Sup. Ct. Rep. 532; The Alliance, 70 Fed. 274, 17 C. C. A. 124, 44 U. S. App. 52; Equity Rule 29.

6 Kansas City N. W. R. R. Co. v. Zimmerman, 210 U. S. 338, 52 L. ed. 1084, 28 Sup. Ct. Rep. 730; Louisville Trust Co. v. Knott, 191 U. S. 225, 48 L. ed. 159, 24 Sup. Ct. Rep. 119; Blythe v. Hinkley, 173 U. S. 501, 43 L. ed. 783, 19 Sup. Ct. Rep. 497; United States ex rel. Mudsill Mining Co. v. Swan, 65 Fed. 647, 13 C. C. A. 77, 31 U. S. App. 112.

the judgment he has recovered, he may also carry the case to the circuit court of appeals on the merits, and this he may do by way of cross appeal or writ or error if the defendant has taken the case there, or independently if the defendant has carried the case to this court on the question of jurisdiction alone, and in this instance the circuit court of appeals will suspend a decision upon the merits until the question of jurisdiction has been determined. (5) The same observations are applicable where a plaintiff objects to the jurisdiction, and is, or both parties are, dissatisfied with the judgment on the merits. (6) In every case in which the complaining party has the right or has and exercises the option to carry his case to the circuit court of appeals for review, that court may decide the question of jurisdiction as well as the question on the merits, for the power of that court to certify the question of jurisdiction to the Supreme Court assumes the power to decide it." [7]

It is evident, then, that if the jurisdiction of the district court is put in issue with other issues on the merits, then an election is given to the party desiring to appeal. He may have the question of jurisdiction alone certified directly to the Supreme Court, —or he may appeal the entire case on the merits, to the circuit court of appeals, whereupon that court may either determine the jurisdictional question itself, or may certify it to the Supreme Court for determination.[8]

Whether the same party may prosecute two appeals from the same determination of his suit, having the question of jurisdiction certified directly to the Supreme Court, while he appeals from the decision and the merits to the circuit court of appeals, is doubtful.

[7] See also New Orleans v. Benjamin, 153 U. S. 411, 38 L. ed. 764, 14 Sup. Ct. Rep. 905; Evans-Snyder Buel Co. v. McCaskill, 41 C. C. A. 577, 101 Fed. 658; McLish v. Roff, 141 U. S. 661, 35 L. ed. 895, 12 Sup. Ct. Rep. 118; Harris v. Rosenberger, 145 Fed. 449, 13 L.R.A.(N.S.) 762, 76 C. C. A. 225; Gates v. Bucki, 4 C. C. A. 116, 12 U. S. App. 69, 53 Fed. 965; Carter v. Roberts, 177 U. S. 500, 44 L. ed. 863, 20 Sup. Ct. Rep. 713; Reliable Incubator & Brooder Co. v. Stahl, 44 C. C. A. 657, 105 Fed. 667; Northern P. R. Co. v. Glaspell, 1 C. C. A. 327, 4 U. S. App. 238, 49 Fed. 482; Robinson v. Caldwell, 165 U. S. 361, 41 L. ed. 746, 17 Sup. Ct. Rep. 343.

[8] Ibid.

The circuit court of appeals has held [9] that this is permissible, but the Supreme Court has reached the opposite conclusion.[10]

§ 2004. Appeals from Final Sentences and Decrees in Prize Causes. The second clause of § 238 confers upon the Supreme Court the jurisdiction of appeals from all final decrees in prize causes. The amount in controversy is immaterial, and no certificate of the district judge as to the importance of the particular case is required.[11]

§ 2005. Cases Involving the Construction or Application of the United States Constitution. Under the third clause of § 238, the district court must have actually construed or applied the Constitution to the case, or must have declined to do so upon being requested so to do.[12] The mere fact that the Constitution *might* have been involved, or *might* have been challenged, if it was not actually so involved or challenged, does not vest the Supreme Court with jurisdiction.[13]

The clause has been held to include a case involving the constitutional power of Congress over the navigable waters of the United States; [14] a case involving the right of citizens of a state to vote for congressmen of the United States; [15] a case in which the question whether the complainants are engaged in Interstate Commerce under paragraph 3 of § 8 of article 1 of the Constitution is involved.[16]

9 Pullman Palace Car Co. v. Central Transportation Co. 22 C. C. A. 246, 39 U. S. App. 307, 76 Fed. 402.

10 American Sugar Refining Co. v. New Orleans, 181 U. S. 277, 45 L. ed. 859, 21 Sup. Ct. Rep. 646. See also Robinson v. Caldwell, 165 U. S. 359, 41 L. ed. 745, 17 Sup. Ct. Rep. 343; Columbus Const. Co. v. Crane Company, 174 U. S. 601, 43 L. ed. 1103, 19 Sup. Ct. Rep. 721; Union & Planters Bank v. Memphis, 189 U. S. 74, 47 L. ed. 714, 23 Sup. Ct. Rep. 604.

11 Paquete Habana, 175 U. S. 677, 44 L. ed. 320, 20 Sup. Ct. Rep. 290.

12 Cornell v. Green, 163 U. S. 75, 41 L. ed. 76, 16 Sup. Ct. Rep. 969.

13 World's Columbian Exposition v. United States, 56 Fed. 654, 6 C. C. A. 58; Railroad Company v. Amato, 144 U. S. 465, 472, 36 L. ed. 596, 12 Sup. Ct. Rep. 740; Snow v. United States, 118 U. S. 346, 30 L. ed. 207, 6 Sup. Ct. Rep. 1059.

14 Cummings v. Chicago, 188 U. S. 410, 47 L. ed. 525, 23 Sup. Ct. Rep. 472.

15 Wiley v. Sinkler, 179 U. S. 62, 45 L. ed. 84, 21 Sup. Ct. Rep. 17.

16 Macon v. Georgia Pkg. Co. 60 Fed. 781, 9 C. C. A. 262.

§ 2006. Constitutionality of United States Law, or Validity or Construction of Treaty Drawn in Question. As in cases included under the preceding clause, the questions must be actually involved, and the court must have been required to pass upon them in reaching this decision.[17] Allegations that the questions were involved, if not supported by the facts of the case, do not vest the Supreme Court with jurisdiction.[18] Questions of fact, although the facts be the outgrowth of the operation of a treaty or statute, do not confer jurisdiction upon the Supreme Court, as the validity or construction of a statute or treaty, or the constitutionality of a United States law, involves only questions of law.[19]

§ 2007. State Law or Constitution Claimed to Contravene the Constitution of the United States. The general requirement and propositions of law applicable to this clause are similar to those applicable to the two preceding clauses, and will be discussed jointly with them in the succeeding sections.

"A state law" includes municipal ordinances as the acts of a state perpetrated through its properly constituted instrumentality, and if the constitutionality of such ordinances is involved the case comes within the purview of this clause.[20] However, a state law which is void under the state Constitution, as well as being in contravention of the Constitution of the United States, cannot raise the question so as to give the Supreme Court jurisdiction.[21]

§ 2008. Clauses three, four, and five of § 238, Judicial Code. The questions included under the 3d, 4th, and 5th clauses

17 Muse v. Arlington Hotel Company, 168 U. S. 430, 42 L. ed. 531, 18 Sup. Ct. Rep. 109.

18 Budzisz v. Illinois Steel Co. 170 U. S. 41, 42 L. ed. 941, 18 Sup. Ct. Rep. 503.

19 In re Newman, 79 Fed. 615; Bordmeyer v. Idler, 159 U. S. 408, 40 L. ed. 199, 16 Sup. Ct. Rep. 34.

20 Pike's Peak Power Co. v. Colorado Springs, 105 Fed. 1, 44 C. C. A. 333; Dawson v. Columbia Ave. Savings Fund, etc., Co. 102 Fed. 200, 42 C. C. A. 258; City R. R. Co. v. Citizens St. R. R. Co. 166 U. S. 557, 41 L. ed. 1114, 17 Sup. Ct. Rep. 653; Walla Walla v. Walla Walla Water Co. 172 U. S. 1, 43 L. ed. 341, 19 Sup. Ct. Rep. 77; St. Paul Gas Light Co. v. St. Paul, 181 U. S. 142, 45 L. ed. 788, 21 Sup. Ct. Rep. 575; Davis Mfg. Co. v. Los Angeles, 189 U. S. 207, 47 L. ed. 778, 23 Sup. Ct. Rep. 498; Owensboro v. Owensboro Water Works, 115 Fed. 318, 53 C. C. A. 146.

21 Indianapolis v. Central Trust Co. 83 Fed. 529, 27 C. C. A. 580.

of § 238 relating to the Constitution, treaties, and laws of the United States, are so closely related, and partake so largely of the same nature that they have been construed and discussed together by the courts, and many of the rules and propositions of law which have been laid down apply to them all.

The Supreme Court has said: "When our jurisdiction is invoked under § 5 . . . on the ground that the case falls within the fourth, fifth, or sixth of the classes of cases therein enumerated, it must appear that a title, right, privilege, or immunity was claimed under the Constitution, and a definite issue in respect to the possession of the right must be distinctly deducible from the record; or that the constitutionality of the particular law or the validity or construction of the particular treaty was necessarily and directly drawn in question; or that the Constitution or law of a state was distinctly claimed to be in contravention of the Constitution of the United States."

Where an appeal or writ of error is taken direct to the Supreme Court under clauses 3, 4, or 5 of § 238, Judicial Code, the Supreme Court acquires jurisdiction, not only of the questions specified in that section, but of all the questions involved in the entire case. This is shown by the fact that under § 238, where an appeal or writ of error is taken direct to the Supreme Court in a case in which the jurisdiction of the district court is in issue, it is specifically directed that the question of jurisdiction alone shall be certified to the Supreme Court; and there is no such limitation prescribed in regard to any of the other cases in which jurisdiction on appeal or error is conferred by § 238.[22]

Upon review under these clauses a certificate, as required by clause (1) is unnecessary, and of no effect. The questions raised under any of the clauses of § 238 must be real, and must represent substantial controversies, not only as to the principles involved, but as to the relation of the party by whom they are raised, to them.[23]

Under § 238 only those questions which the record shows to

[22] Horner v. United States, 143 U. S. 570, 36 L. ed. 266, 12 Sup. Ct. Rep. 522.

[23] Lamposas v. Bell, 180 U. S. 284.

have been raised in the lower court are available to confer jurisdiction in the Supreme Court, and an assignment of errors cannot be availed of to import questions into a cause which the record does not so show to have been raised.

§ 2009. Appeal and Error, Circuit Courts of Appeal to Supreme Court.

§ *241, Judicial Code,*[b] *36 Stat. at L. 1157, Comp. St. 1911, p. 229, 1912 Supp. F. S. A. v. 1, p. 232.* "In any case in which the judgment or decree of the circuit court of appeals is not made final by the provisions of this title, there shall be of right an appeal or writ of error to the Supreme Court of the United States where the matter in controversy shall exceed $1,000 besides costs."

§ 2010. Certiorari by Supreme Court in Decisions Otherwise Final in Circuit Courts of Appeal.

§ *240, Judicial Code,*[c] *36 Stat. at L. 1157, Comp. St. 1911, p. 228, 1912 Supp. F. S. A. v. 1, p. 232.* "In any case, civil or criminal, in which the judgment or decree of the circuit court of appeals is made final by the provisions of this title, it shall be competent for the Supreme Court to require, by certiorari or otherwise upon the petition of any party thereto, any such case to be certified to the Supreme Court for its review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court."

§ 2011. Certification to Supreme Court by Circuit Court of Appeals.

§ *239, Judicial Code,*[d] *36 Stat. at L. 1157, Comp. St. 1911, p. 228, 1912 Supp. F. S. A. v. 1, p. 231.* "In any case within its appellate jurisdiction as defined in § 128, the circuit court of appeals at any time may certify to the Supreme Court of the United States any question or propositions of law concerning which it desires the instruction of that court for its proper decision; and thereupon the Supreme Court

[b] Drawn from § 6 of act of March 3, 1891, ch. 517, 26 Stat. at L. 828, Rose's Code, § 1904, Comp. St. 1901, p. 549, 4 F. S. A. 409, which is repealed by § 297, Judicial Code.

[c] For Annotation of this § 240, Judicial Code, see footnote [a], ante, our § 840.

[d] For Annotation of this § 239, Judicial Code, see footnote [a], ante, our § 840.

may either give its instruction on the question and propositions certified to, which shall be binding upon the circuit court of appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal."

§ 2012. Appeals from Court of Claims.

§ *242, Judicial Code,*[e] *36 Stat. at L. 1157, Comp. St. 1911, p. 229, 1912 Supp. F. S. A. v. 1, p. 232.* "An appeal to the Supreme Court shall be allowed on behalf of the United States from all judgments of the court of claims, adverse to the United States, and on behalf to the plaintiff in any case where the amount in controversy exceeds three thousand dollars, or where his claim is forfeited to the United States by the judgment of said court as provided in § 172."

§ *172, Judicial Code,*[f] *36 Stat. at L. 1141, Comp. St. 1911, p. 205, 1912 Supp. F. S. A. v. 1, p. 207.* "Any person who corruptly practises or attempts to practise any fraud against the United States in the proof, statement, establishment, or allowance of any claim or any part of any claim against the United States, shall, *ipso facto,* forfeit the same to the government; and it shall be the duty of the court of claims in such cases to find specifically that such fraud was practised or attempted to be practised, and thereupon to give judgment that such claim is forfeited to the government and that the claimant be forever barred from prosecuting the same."

§ *243, Judicial Code,*[g] *36 Stat. at L. 1157, Comp. St. 1911, p. 229, 1912 Supp. F. S. A. v. 1, p. 232.* "All appeals from the court of claims shall be taken within ninety days after the judgment is rendered, and shall be allowed, under such regulations as the Supreme Court may direct."

[e] Re-enacting § 707, R. S. Rose's Code, § 38, Foster's Fed. Prac. (4th ed.) pp. 287, 1740, 1993, 2046, Comp. St. 1901, p. 574, 4 F. S. A. 467, which section is repealed by § 297, Judicial Code.

[f] Re-enacting § 1086, R. S. Rose's Code, § 1468, Foster's Fed. Prac. (4th ed.) p. 1737, Comp. St. 1901, p. 745, 2 F. S. A. 71, which section is repealed by § 297, Judicial Code.

[g] Re-enacting § 708, R. S. Rose's Code, § 1907, Foster's Fed. Prac. (4th ed.) pp. 287, 2062, 2063, Comp. St. 1901, p. 575, 4 F. S. A. 467, which is repealed by § 297, Judicial Code.

§ 2013. Appeal and Error from Courts of Porto Rico.

§ *244, Judicial Code,*[h] *36 Stat. at L. 1157, Comp. St. 1911, p. 229, 1912 Supp. F. S. A. v. 1, p. 233.* "Writs of error and appeals from the final judgments and decree of the supreme court of, and the United States district court for, Porto Rico, may be taken and prosecuted to the Supreme Court of the United States in any case where is involved the validity of any copyright, or in which is drawn in question the validity of a treaty or statute of, or authority exercised under, the United States, or wherein the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied, without regard to the sum or value of the matter in dispute; and in all other cases in which the sum or value of the matter in dispute, exclusive of costs, exceeds the sum or value of five thousand dollars. Such writs of error and appeals shall be taken within the same time, and in the same manner, and under the same regulation, as writs of error and appeals are taken to the Supreme Court of the United States from the district court."

§ 2014. Appeal and Error from Supreme Court of Hawaii.

§ *246, Judicial Code,*[i] *36 Stat. at L. 1158, Comp. St. 1911, p. 230, 1912 Supp. F. S. A. v. 1, p. 233.* "Writs of error and appeals from the final judgments and decrees of the Supreme Court of a territory of Hawaii may be taken and prosecuted to the Supreme Court of the United States, within the same time, under the same regulations, in the same manner, and in the same classes of cases, in which writs of error and appeals from the final judgments and decrees of the highest court of the state in which a decision in the suit could be had, may be taken and prosecuted to the Supreme Court of the United States under the provision of § 237; and also in all cases wherein the amount involved, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds the sum or value of five thousand dollars."

[h] Drawn from § 35 of the Organic Act of Porto Rico, of April 12, 1900, ch. 191, 31 Stat. at L. 77, Rose's Code, §§ 1672, 2095, 5 F. S. A. 773.

[i] Re-enacting act of April 30, 1900, ch. 339, 31 Stat. at L. 158, 3 F. S. A. 206, as amended by act of March 3, 1908, 35 Stat. at L. 838, Foster's Fed. Prac. (4th ed.) p. 230, 1909 Supp. F. S. A. 152.

§ 2015. Appeal and Error from District Courts of Alaska.

§ 247, Judicial Code,[j] *36 Stat. at L. 1158, Comp. St. 1911, p. 230, 1912 Supp. F. S. A. v. 1, p. 234.* "Appeals and writs of error may be taken and prosecuted from final judgment and decree of the district court for the district of Alaska or for any division thereof, direct to the Supreme Court of the United States in the following cases: In prize cases; and in all cases which involve the construction or application of the Constitution of the United States, or in which the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority is drawn in question, or in which the Constitution or law of a state is claimed to be in contravention of the Constitution of the United States. Such writs of error and appeal shall be taken within the same time, and in the same manner, and under the same regulation, as writs of error and appeals are taken from the district court to the Supreme Court."

§ 2016. Appeal and Error from the Supreme Court of the Philippine Islands.

§ 248, Judicial Code,[k] *36 Stat. at L. 1158, Comp. St. 1911, p. 230, 1912 Supp. F. S. A. v. 1, p. 234.* "The Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgment and decree of the supreme court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby, in which the Constitution, or any statute, treaty, title, right, or privilege of the United States is involved, or in causes in which the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and such final judgments or decrees may and can be reviewed, revised, reversed, modified, or affirmed by said supreme court on appeal or writ of error by the party aggrieved, within the same time, in the same manner, under the same regulations, and by the same pro-

[j] Drawn from § 202 of the Criminal Code of Alaska, 1 F. S. A. 370, and § 504, of the C. C. of Alaska, 1 F. S. A. 147.

[k] Re-enacting § 10 of act of July 1, 1902, ch. 1369, 32 Stat. at L. 691, Foster's Fed. Prac. (4th ed.) pp. 2000, 2046, 5 F. S. A. 722.

cedure, so far as applicable, as the final judgments and decrees of the district courts of the United States."

§ 2017. Jurisdiction When Territory Admitted after Judgment Rendered.

§ 249, Judicial Code,[l] *36 Stat. at L. 1158, Comp. St. 1911, p. 231, 1912 Supp. F. S. A. v. 1, p. 235.* "In all cases where the judgment or decree of any court of a territory might be reviewed by the Supreme Court on writ of error or appeal, such writ of error or appeal may be taken, within the time and in the manner provided by law, notwithstanding such territory has, after such judgment or decree, been admitted as a state; and the Supreme Court shall direct the mandate to such court as the nature of the writ of error or appeal required."

§ 2018. Appeal and Error from the Court of Appeals for the District of Columbia.

§ 250, Judicial Code,[m] *36 Stat. at L. 1159, Comp. St. 1901, p. 231, 1912 Supp. F. S. A. v. 1, p. 235.* "Any final judgment or decree of the court of appeals of the District of Columbia may be re-examined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in the following cases:

"First. In cases in which the jurisdiction of the trial court is in issue; but when any such case is not otherwise reviewable in such Supreme Court, then the question of jurisdiction alone shall be certified to said Supreme Court for decision.

"Second. In prize causes.

"Third. In cases involving the construction or application of the Constitution of the United States, or the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority.

"Fourth. In cases in which the Constitution, or any law of a state, is claimed to be in contravention of the Constitution of the United States.

"Fifth. In cases in which the validity of any authority

[l] Re-enacting § 703, R. S. Comp. St. 1901, p. 572, 4 F. S. A. 461, which section is repealed by § 297, Judicial Code.

[m] Previous to this appeals were taken in the same manner as from the circuit courts. See § 705, R. S. Foster's Fed. Prac. (4th ed.) p. 2062, Comp. St. 1901, p. 573, 4 F. S. A. 462, which is repealed by § 297, Judicial Code.

exercised under the United States, or the existence or scope of any power or duty of an officer of the United States, is drawn in question.

"Sixth. In cases in which the construction of any law of the United States is drawn in question by the defendant.

"Except as provided in the next succeeding section, the judgments and decrees of said court of appeals shall be final in all cases arising under the patent laws, the revenue laws, the criminal laws, and in admiralty cases; and, except as provided in the next succeeding section, the judgments and decrees of said court of appeals shall be final in all cases not reviewable as hereinbefore provided.

"Writs of error and appeals shall be taken within the same time, in the same manner, and under the same regulation, as writs of error and appeals are taken from the district courts of appeals to the Supreme Court of the United States."

§ 2019. Review of Final Decisions of the Court of Appeals of the District of Columbia, by the Supreme Court.

§ 251, Judicial Code,[n] *36 Stat at L. 1159, Comp. St. 1911, p. 232, 1912 Supp. F. S. A. v. 1, p. 236.* "In any case in which the judgment or decree of said court of appeals is made final by the section last preceding, it shall be competent for the Supreme Court of the United States to require, by certiorari or otherwise, such case to be certified to it for its review and determination with the same power and authority in the case as if it had been carried by writ of error or appeal to said Supreme Court. It shall also be competent for said court of appeals in any case in which its judgment or decree is made final under the section last preceding, at any time to certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for their proper division; and thereupon the Supreme Court may either give its instructions on the questions and propositions certified to it, which shall be binding upon said court of appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole

[n] The part of the section authorizing certiorari is from act of March 3, 1897, ch. 390, 29 Stat. at L. 692, Foster's Fed. Prac. (4th ed.) pp. 880, 1194, 1198, the part referring to certifying questions is new legislation as concerns the District of Columbia.

matter in controversy in the same manner as if it had been brought here for review by writ of error or appeal."

§ 2020. Appeals from Bankruptcy Courts.

Judicial Code, § 252,[o] *36 Stat. at L. 1159, 1912 Supp. F. S. A. v. 1, p. 237.* "The Supreme Court of the United States is hereby invested with appellate jurisdiction of controversies arising in bankruptcy procedure from the courts of bankruptcy from which it has appellate jurisdiction in other cases; and shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the supreme court of the District of Columbia.

"An appeal may be taken to the Supreme Court of the United States from any final decision of a court of appeals allowing or rejecting a claim under the laws relating to bankruptcy, under such rules and within such time as may be prescribed by the said Supreme Court in the following cases and no other:

"1st. Where the amount in controversy exceeds the sum of $2,000, and the question involved is one which might have been taken on appeal or writ of error from the highest court of the state to the Supreme Court of the United States; or

"2d. Where some justice of the Supreme Court shall certify that in his opinion the determination of the question involved in the allowance or rejection of such claim is essential to a uniform construction of the laws relating to bankruptcy throughout the United States.

"Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof, and may issue writs of certiorari pursuant to the provisions of the United States laws now in force, or such as may be hereafter enacted."

§ 2021. Mandamus to Revise and Correct Proceedings in Lower Courts.

§ 234, Judicial Code,[p] *36 Stat. at L. 1156, Comp. St. 1911, p. 227, 1912 Supp. F. S. A. v. 1, p. 230.* "The Su-

[o] Re-enacting §§ 24 and 25 of the Bankruptcy Act of July 1, 1898, Rose's Code, §§ 2310, 2312. Foster's Fed. Prac. (4th ed.) p. 1850, Comp. St. 1901, p. 3431, 1 F. S. A. 593.

[p] Re-enacting § 688, R. S. Rose's Code, § 844, Foster's Fed. Prac. (4th ed.) pp. 79, 1156–73–75–76–77, 1866, Comp. St. 1901, p. 565, 4 F. S. A. 439, which section is repealed by § 297, Judicial Code.

preme Court shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a state, or an ambassador, or other public minister, or a consul, or vice consul is a party."

§ *262, Judicial Code,*[q] *36 Stat. at L. 1162, Comp. St. 1911, p. 235, 1912 Supp. F. S. A. v. 1, p. 241.* "The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

Under these provisions (formerly §§ 688 and 716, R. S.) the Supreme Court may revise and correct district court decisions by mandamus, but only in cases where the relief cannot be obtained by appeal or error.[24]

Mandamus will lie to compel a district court to take jurisdiction of a proper case,[25] or to remand a cause improperly removed, if the defect appears on the face of the record,[26] and it is from § 262 that the Supreme Court derives its power to issue a writ of certiorari upon suggestion of diminution of the record on appeal.

[24] In re Pollitz, 206 U. S. 323, 51 L. ed. 1081, 27 Sup. Ct. Rep. 729; Ex parte Harding, 219 U. S. 363, 55 L. ed. 252, 31 Sup. Ct. Rep. 324, 37 L.R.A. (N.S.) 392.

[25] In re Pollitz, 206 U. S. 323, 51 L. ed. 1081, 27 Sup. Ct. Rep. 729; Grossmayer, Petitioner, 177 U. S. 48, 44 L. ed. 665, 20 Sup. Ct. Rep. 535.

[26] In re Winn, 213 U. S. 458, 53 L. ed. 873, 29 Sup. Ct. Rep. 515.

[q] For Annotation of this § 262, Judicial Code, see footnote [d], ante, our § 1054.

CHAPTER 40.

APPELLATE JURISDICTION OF CIRCUIT COURT OF APPEALS.

Sec.
2030. In General.
2031. Appeal and Error from District Courts to Circuit Court of Appeals.
2032. Appeals from Interlocutory Orders in Injunction and Receivership Proceedings in District Courts.
2033. Appellate and Supervisory Jurisdiction in Bankruptcy Cases.
2034. Appeal and Error from the United States Court for China.
2035. Appeals and Writs of Error from District Court for Alaska.
2036. Place of Hearing of Appeals and Writs of Error from Alaska.
2037. Appellate Jurisdiction from District Courts Canal Zone.
2038. Powers and Duties of Judges upon Appeal.

§ 2030. In General. The jurisdiction of the circuit courts of appeals is wholly appellate, and is governed by chapter 6, Judicial Code, §§ 128 et seq., which sections are largely re-enactments of the act of Mar. 3, 1891, Comp. St. 1901, p. 547, 4 F. S. A. 395.

The jurisdiction includes not only appeals and writs of error from certain final decisions in district courts,[1] but also appeals from interlocutory orders granting, refusing, dissolving, or refusing to dissolve an injunction, or appointing a receiver,[2] and appeals and writs of error from the United States court for China,[3] appeals and writs of error in certain cases from the district courts of Hawaii,[4] Alaska,[5] and appellate supervision of bankruptcy cases,[6] and in the fifth circuit from final judgments and decrees of the district courts in the Canal Zone.[7]

[1] Infra, § 2031. [2] Infra, § 2032. [3] Infra, § 2034. [4] Infra, § 2031.
[5] Infra, § 2035. [6] Infra, § 2033. [7] Infra, § 2037.

§ 2031. Appeal and Error from District Courts to Circuit Court of Appeals.

§ 128, Judicial Code,[a] *36 Stat. at L. 1133, Comp. St. 1911, p. 193, 1912 Supp. F. S. A. v. 1, p. 195.* "The circuit court of appeals shall exercise appellate jurisdiction to review by appeal or writ of error final decisions in district courts, including the United States district court of Hawaii, in all cases other than those in which appeals and writs of error may be taken direct to the Supreme Court, as provided in § 238, unless otherwise provided by law; and except as provided in §§ 239 and 240, the judgments and decrees of the circuit courts of appeal shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy, being aliens and citizens of the United States, or citizens of different states; also in all cases arising under the patent laws, under the copyright laws, under the revenue laws, and under the criminal laws, and in admiralty cases."

Final judgments and decrees appealable from district courts to the circuit court of appeal are determined by a process of elimination, and include "all final decisions in district courts, in all cases other than those in which appeals and writs of error may be taken direct to the Supreme Court, as provided in § 238,[8] unless otherwise provided by law."

§ 2032. Appeals from Interlocutory Orders in Injunction and Receivership Proceedings in District Courts.

§ 129, Judicial Code,[b] *36 Stat. at L. 1134, Comp. St.*

[8] Supra, § 2001.

[a] Re-enacting part of § 6, act of March 3, 1891, 26 Stat. at L. 828, Rose's Code, § 1904, Foster's Fed. Prac. (4th ed.) pp. 1198, 1660, 1976, 1978, 1987, 1988, 2015, 2016, 2031, 2044, 2063, 2064, Comp. St. 1901, p. 549, 4 F. S. A. 409.

"Final decision" means a final decision which was then appealable under the existing law.

North American Trading Co. v. Smith, 93 Fed. 7, 35 C. C. A. 183. Appellate jurisdiction, Four Hundred and Forty-three Cans of Frozen Egg Product v. United States, 226 U. S. 172, 57 L. ed. 174, 33 Sup. Ct. Rep. 50, reversing United States v. Four Hundred and Forty-three Cans of Frozen Egg Product, 193 Fed. 589, 113 C. C. A. 457.

Final decisions of C. C. A., see Missouri, Kansas & Texas Railway Company v. Wulf, 226 U. S. 570, 57 L. ed. 355, 33 Sup. Ct. Rep. 135.

Final decisions of districts courts, In re Metropolitan Trust Co. 218 U. S. 312, 54 L. ed. 1051, 31 Sup. Ct. Rep. 18.

[b] Re-enacting § 7, act of March 3, 1891, 31 Stat. at L. 660, Rose's Code, §§ 1906, 2020 2056, Foster's Fed. Prac. (4th ed.) pp. 689, 737, 759, 1013, 2015,

1911, p. 194, 1912 Supp. F. S. A. v. 1, p. 195. "Where upon a hearing in equity in a district court, or by a judge thereof in vacation, an injunction shall be granted, continued, refused, or dissolved by an interlocutory order or decree, or an application to dissolve an injunction shall be refused, or an interlocutory order or decree shall be made appointing a receiver, an appeal may be taken from such interlocutory order or decree granting, continuing, refusing, dissolving, or refusing to dissolve an injunction, or appointing a receiver to the circuit court of appeals, notwithstanding an appeal in such case might, upon final decree under the statutes regulating the same, be taken directly to the Supreme Court: *Provided,* That the appeal must be taken within thirty days from the entry of such order or decree, and it shall take precedence in the appellate court; and the proceedings in other respects in the court below shall not be stayed unless otherwise ordered by that court, or the appellate court, or a judge thereof, during the pendency of such appeal: *Provided, however,* That the court below may, in its discretion, require as a condition of the appeal an additional bond."

§ 2033. Appellate and Supervisory Jurisdiction in Bankruptcy Cases.

§ *130, Judicial Code,*[c] *36 Stat. at L. 1134, Comp. St. 1911, p. 194, 1912 Supp. F. S. A. v. 1, p. 196.* "The circuit courts of appeals shall have the appellate and supervisory jurisdiction conferred upon them by the act entitled, 'An Act to Establish a Uniform System of Bankruptcy throughout the United States,' approved July 1, 1898, and all laws amendatory thereof, and shall exercise the same in the manner therein prescribed."

This section is only declaratory of the appellate jurisdiction

2042, 2064, 2089, Comp. St. 1901, p. 550, 4 F. S. A. 422. The purpose of this section is to save the parties from the expense of further litigation should the appellate court be of the opinion that plaintiff was not entitled to an injunction because his bill had no equity to support it. Smith v. Vulean Iron Works, 165 U. S. 518, 41 L. ed. 810, 17 Sup. Ct. Rep. 407. In Gen. Jackson Co. et al. v. Gardiner Inv. Co. 200 Fed. 113, 118 C. C. A. 287; Pioneer Lace Mfg. Co. v. Dodd, 181 Fed. 688, 104 C. C. A. 586; Pressed Steel Car Co. v. Chicago & A. R. Co. 192 Fed. 517, 113 C. C. A. 73.

[c] Referring to §§ 24 and 25 of the Bankruptcy Act, Rose's Code, §§ 2310, 2312, Foster's Fed. Prac. (4th ed.) p. 1850, Comp. St. 1901, p. 3431, 1 F. S. A. 593.

conferred upon the circuit court of appeals by §§ 24 and 25 of the bankruptcy act of 1898, and for a full treatment of this jurisdiction we refer to that act and to the various works on bankruptcy.

§ 2034. Appeal and Error from the United States Court for China.

> § *131, Judicial Code,*[d] *36 Stat. at L. 1134, Comp. St. 1911, p. 194, 1912 Supp. F. S. A. v. 1, p. 196.* "The circuit court of appeals for the ninth circuit is empowered to hear and determine writs of error and appeals from the United States court for China as provided in the act entitled, 'An Act Creating a United States Court for China and Prescribing the Jurisdiction Thereof,' approved June 30, 1906."

This section, like the preceding one, is merely declaratory of the appellate jurisdiction conferred by § 3 of the act referred to.

§ 2035. Appeals and Writs of Error from District Court for Alaska.

> § *134, Judicial Code,*[e] *36 Stat. at L. 1134, Comp. St. 1911, p. 195, 1912 Supp. F. S. A. v. 1, p. 197.* "In all cases other than those in which a writ of error or appeal will lie direct to the Supreme Court of the United States as provided in § 247, in which the amount involved or the value of the subject-matter in controversy shall exceed five hundred dollars, and in all criminal cases, writs of error and appeals shall lie from the district court for Alaska or from any division thereof to the circuit court of appeals for the ninth circuit, and the judgments, orders, and decrees of such court shall be final in such cases. But whenever such circuit court of appeals may desire the instruction of the Supreme Court of the United States upon any question or proposition of law which shall have arisen in any such case, the court may certify such question or proposition to the Supreme Court, and thereupon the Supreme Court shall give its instruction upon the question or proposition certified to it, and its instruction shall be binding upon the circuit court of appeals."

[d] Referring to § 3, act of June 28, 1906, ch. 3934, 34 Stat. at L. 815, 1909 Supp. F. S. A. 294. In general, Price v. United States, 169 Fed. 791, 95 C. C. A. 257.

[e] For Annotation of this § 134, Judicial Code, see footnote [b], ante, our § 842.

§ 2036. Place of Hearing of Appeals and Writs of Error from Alaska.

§ *135, Judicial Code,*[f] *36 Stat. at L. 1135, Comp. St. 1911, p. 195, 1912 Supp. F. S. A. v. 1, p. 197.* "All appeals and writs of error, and other cases, coming from the district court for the district of Alaska to the circuit court of appeals for the ninth circuit, shall be entered upon the docket and heard at San Francisco, California, or at Portland, Oregon, or at Seattle, Washington, as the trial court before whom the case was tried below shall fix and determine: *Provided,* That at any time before the hearing of any appeal, writ of error, or other cases, the parties thereto, through their respective attorneys, may stipulate at which of the above named places the same shall be heard, in which case the case shall be remitted to and entered upon the docket at the place so stipulated, and shall be heard there."

§ 2037. Appellate Jurisdiction from District Court Canal Zone.

Pt. § *9, Act Aug. 24, 1912, ch 390, 37 Stat. at L. 566.* "The circuit court of appeals of the fifth circuit of the United States shall have jurisdiction to review, revise, modify, reverse, or affirm the final judgments and decrees of the district court of the Canal Zone and to render such judgments as in the opinion of the said appellate court should have been rendered by the trial court in all actions and proceedings in which the Constitution, or any statute, treaty, title, right, or privilege of the United States, is involved and a right thereunder denied, and in cases in which the value in controversy exceeds one thousand dollars, to be ascertained by the oath of either party, or by other competent evidence, and also in criminal causes wherein the offense charged is punishable as a felony. And such appellate jurisdiction, subject to the right of review by or appeal to the Supreme Court of the United States as in other cases authorized by law, may be exercised by said circuit court of appeals in the same manner, under the same regulations, and by the same procedure as nearly as practicable as is done in reviewing the final judgments and decrees of the district courts of the United States."

[f] Re-enacting act of Jan. 11, 1909, ch. 15, 35 Stat. at L. 585, 1909 Supp. F. S. A. 30.

§ 2038. Powers and Duties of Judges upon Appeal.

§ *132, Judicial Code,*[g] *36 Stat. at L. 1134, Comp. St. 1911, p. 194, 1912 Supp. F. S. A. 196.* "Any judge of a circuit court of appeals, in respect of cases brought or to be brought before that court, shall have the same powers and duties as to allowances of appeals and writs of error, and the condition of such allowances, as by law belong to the justices or judges in respect of other courts of the United States respectively."

[g] Re-enacting § 11 of C. C. A. act of March 3, 1891, ch. 517, 26 Stat. at L. 829, Rose's Code, §§ 1890, 1905, Comp. St. 1901, p. 552, 4 F. S. A. 428. In general, McClellan v. Carland, 217 U. S. 268, 54 L. ed. 762, 30 Sup. Ct. Rep. 501.

CHAPTER 41.

APPELLATE PROCEDURE IN EQUITY.

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§ 2050. In General. While the distinction between appeals and writs of error is well defined and rigidly observed as stated in chapter 28, the procedure by which the review is obtained in each case is similar, the same steps being necessary and the same time limit usually applying in both proceedings. Consequently what is here stated with regard to procedure on appeal applies as well to procedure upon writ of error, subject to the qualifications contained in chapter 28.

Federal appeals as treated herein are of four general classes:

1st. Appeals from district courts to United States Supreme Court.[1]

2d. Appeals from district courts to circuit courts of appeal.[2]

3d. Appeals from circuit courts of appeal to Supreme Court.[3]

4th. Writs of error to state courts of last resort from the United States Supreme Court.[4]

In addition to these four classes of appeals, there is provided a method of appeal by certiorari or by certification of questions of law from the circuit courts of appeal to the Supreme Court in cases where the decision of the circuit courts of appeal is otherwise final.[5]

The procedure on appeal in each of the four classes is identical except as to the time within which the appeal must be taken, and

[1] See chapter 39. [2] See chapter 40. [3] See chapter 39. [4] See chapter 11. [5] See chapter 39.

as to the differences in practice due to variations in the rules of the various circuits which should always be examined by the practitioner. These rules will be found in the Appendix, where the corresponding rules of each circuit are grouped together, and where circuit courts of appeals rules are designated by number in this chapter, the compilation in the Appendix is referred to.

Consequently the four classes of appeals enumerated are herein treated collectively except as to the time within which appeals must be taken, while proceedings upon certiorari or certification from the circuit courts of appeal to the Supreme Court are treated separately. Appellate procedure from courts of Porto Rico, Hawaii, Alaska, the Philippines, and the District of Columbia falls within one of the four classes previously enumerated, as indicated in separate sections.

Procedure in the appellate court, after the transcript has been properly filed therein, dismissal of appeals, writ of mandate, and effect of death on appeals, are separately treated in the latter part of the chapter.

§ 2051. Parties in Appeal. In cases of joint judgments or decrees, all parties interested or affected by the decree or judgment must join in an appeal therefrom unless it appears from the record that there is good cause why they cannot be so joined.

However, if one or more of the interested parties refuse to join in the appeal, those who desire to do so may serve their co-defendants or plaintiffs, as the case may be, with a notice of their intention to appeal and a request for them to join therein. Then if they refuse to be made parties, a motion may be filed setting forth the facts and praying that the appeal may be prosecuted by those of the parties desiring to do so. This motion, being granted, constitutes what is called "severance," and the appeal by those of the parties who desire to institute it is maintainable. Failure to join all interested parties without having obtained a severance is fatal to the jurisdiction of the appellate court, and the motion for the severance must be incorporated in the record in or-

der to vest that court with jurisdiction. This matter may be raised at any time before final disposition of the appeal.[6]

It is said in the case of Hardee v. Wilson, 146 U. S. 179, that there are two reasons for the rule: (1) That the successful parties may be at liberty to proceed in the enforcement of his judgment or decree against the parties who do not desire to have it reviewed; (2) that the appellate tribunal shall not be required to decide a second or third time the same question on the same record.

An exception to this rule exists in a case where one of several defendants affected by a joint decree takes his appeal in open court when the decree is entered.[7]

Inasmuch as all parties are then deemed present in court, the allowance of the appeal under these conditions takes the place of summons and severance, and if citation issues, or if other notice is given, it is considered superfluous, any defects being immaterial.[8]

Ordinarily only a party to the suit is entitled to appeal,[9] but there are cases in which the interest of persons not made parties to the original suit are so affected by the decree that they are entitled to a review.[10] When this is the case, the interest of such persons must clearly appear as well as the manner in which such interest is affected by the decree complained of, which should probably be done by a sworn petition for appeal, setting up those facts and petitioning for an order of intervention allowing them to become parties for the purposes of appeal.[11]

Such intervention, however, rests within the discretion of the court, and if the petition is refused mandamus will not lie.[12]

An example of a case in which an appeal may be allowed on behalf of one not a party to the original proceeding, is found in

6 Loveless v. Ransom, 107 Fed. 627, 46 C. C. A. 515.
7 Detroit v. Guarantee Co. 168 Fed. 611, 93 C. C. A. 604.
8 Swift v. Kortrecht, 110 Fed. 328, 49 C. C. A. 68.
9 Ex parte Cockcroft, 104 U. S. 578, 26 L. ed. 856; In re Woerishoffer, 74 Fed 916, 21 C. C. A. 175 (cases cited).
10 Davis v. Mercantile Trust Co. 152 U. S. 594, 38 L. ed. 563, 14 Sup. Ct. Rep. 693.
11 Aiken v. Smith, 54 Fed. 896, 4 C. C. A. 654.
12 In re Columbia Real Estate Co. 112 Fed. 645, 50 C. C. A. 406.

the case of an appeal by a reciever in a foreclosure suit who is not a party to the original suit,[13] and also, under certain conditions, the case of a purchaser of property at a foreclosure sale.[14]

Where a corporation is a party to a suit, an appeal may be prosecuted in the corporate name, but if the appellant is a partnership the appeal may not be taken in the firm name, but must be prosecuted in the name of the individual partners, each of whom must personally sign the appeal bond.[15]

The rule that all parties must be joined in an appeal applies to appellees as well as to appellants, but where several appellees are representatives of a class, "citation need be served only upon a few of each class who should appear in good faith in defense of the interest of that class." [16]

§ 2052. Time for Appeals from District Courts to the Supreme Court of the United States.

§ 1008, R. S., Comp. St. 1901, p. 715, 4 F. S. A. 622. "No judgment, decree, or order of a circuit or district court, in any civil action, at law or in equity, shall be reviewed in the Supreme Court, on writ of error or appeal, unless the writ of error is brought, or the appeal is taken, within two years after the entry of such judgment, order, or decree: *Provided,* That where a party entitled to prosecute a writ of error or to take an appeal is an infant, insane person, or imprisoned, such writ of error may be prosecuted or such appeal may be taken, within two years after the judgment, decree, or order, exclusive of the term of such disability."

§ 2053. Time for Appeals to Circuit Courts of Appeal. Those sections of the Judicial Code relating to circuit courts of appeal are largely re-enactments of the act of March 3, 1891. However § 11 of that act prescribing the time, procedure, and method of appeal has not been re-enacted (except as to the con-

[13] Honey v. McDonald, 109 U. S. 155, 27 L. ed. 889.
[14] Davis v. Mercantile Trust Co. 152 U. S. 594, 38 L. ed. 563, 14 Sup. Ct. Rep. 693.
[15] Estes v. Trabue, 128 U. S. 225, 32 L. ed. 437, 9 Sup. Ct. Rep. 58.
[16] Kidder v. Fidelity Ins. Trust & Safe Deposit Co. 105 Fed. 821, 44 C. C A. 593.

cluding sentence thereof, which now constitutes § 132 of the Judicial Code), but still remains in force.

That part of the act relating to the time within which appeals must be taken is as follows:

> *Pt. § 11, Act March 3, 1891, Comp. St. 1901, p. 552, 4 F. S. A. 428.* "No appeal or writ of error by which any order, judgment, or decree may be reviewed in the circuit court of appeals shall be taken or sued out except within six months after the entry of the order, judgment, or decree sought to be reviewed: *Provided, however,* That in all cases in which a lesser time is now by law limited for appeals or writs of error, such limits of time shall apply to appeal or writs of error in such cases taken to or sued out from the circuit court of appeals."

§ 2054. Time for Appeals to Circuit Courts of Appeal from Interlocutory Orders.

> *Pt. § 129, Judicial Code,*[a] *36 Stat. at L. 1134, Comp. St. 1911, p. 194, 1912 Supp. F. S. A. v. 1, p. 195.* "The appeal . . . (from an interlocutory order or decree, granting, continuing, refusing, dissolving, or refusing to dissolve an injunction, or appointing a receiver,—to the circuit court of appeals) must be taken within thirty days from the entry of such order or decree."

§ 2055. Time for Appeals from Circuit Courts of Appeal to Supreme Court. Appeals in the third class of cases above enumerated must be taken within the time prescribed by § 6 of the act of March 3, 1891, that part of the act relating to the time limit in this classification being as follows:

> *Pt. § 6, Act March 3, 1891, Comp. St. 1901, p. 550, 4 F. S. A. 409.* "In all cases . . . not hereinbefore made final, there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs. But no such appeal shall be taken or

[a] For Annotation of this § 129, Judicial Code, see footnote [b], ante, our § 2032.

writ of error sued out unless within one year after the entry of the order, judgment, or decree sought to be reviewed."

The above-quoted paragraph has been re-enacted except as to the concluding sentence relating to the time within which appeals must be taken, as § 241, Judicial Code. But the act of 1891 still remains in force as to the time therein prescribed.

§ 2056. Time to Secure Review of State Court Decisions.

§ 1003, R. S., Comp. St. 1901, p. 713, 4 F. S. A. p. 616. "Writs of error from the Supreme Court to a state court, in cases authorized by law, shall be issued in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a court of the United States."

The writ of error must, therefore, be allowed within two years after the entry of judgment or decree, as provided by § 1008, R. S., Comp. St. 1901, p. 715, 4 F. S. A. p. 622, quoted § 2052.

§ 2057. Procedure on Appeal to Circuit Courts of Appeal the Same as to Supreme Court.

Pt. § 11, Act March 3, 1891, ch. 517, Comp. St. 1901, p. 552, 4 F. S. A. 428. "All provisions of law now in force regulating the method and system of review through appeals and writs of error shall regulate the methods and systems of appeals and writs of error provided for in this act in respect to the circuit courts of appeals, including all provisions for bonds or other securities to be required and taken on such appeals and writs of error, and any judge of the circuit court of appeals in respect of cases brought or to be brought to that court shall have the same powers and duties as to the allowance of appeals or writs of error, and the conditions of each allowance now belong to the justices or judges in respect of the existing courts of the United States respectively."

The effect of this act is to make the practice and procedure upon appeals and writs of error to the circuit court of appeals identical of that upon appeal and error to the Supreme Court,

except as to difference resulting from differences between rules of the various circuits.

§ 2058. Allowance of Appeals. The first step in prosecuting an appeal, whether to the Supreme Court or the circuit court of appeals, is to have the appeal "allowed." When this is done the appeal is "taken" in the sense prescribed by the statutes fixing the time for appeal.

There are two methods of having an appeal allowed:

First. When the decree of the lower court is rendered, appellant may give notice of appeal in open court, at the same time filing his assignment of errors (which by court rules must be filed before the allowance) and also filing and procuring the acceptance of the necessary bond within the term of court then pending. An appeal thus allowed in open court is perfected without any written petition for appeal or citation.

Second. If the appeal is not perfected as above, the first step toward having it allowed is the preparation and filing of a petition for appeal addressed to the lower court, which may be substantially in the following form:

Title of court and cause } In Equity.

To the Honorable ....., District Judge, the above named ..... feeling aggrieved by the decree rendered and entered in the above entitled cause on the ..... day of ..... A. D. 19..., does hereby appeal from said decree to the circuit court of appeals for the ..... circuit (or to the Supreme Court of the United States) for the reasons set forth in the assignment of errors filed herewith, and he prays that his appeal be allowed and that citation be issued as provided by law, and that a transcript of the record proceedings and document upon which said decree was based, duly authenticated be sent to the United States Circuit Court of Appeals for the ..... Circuit (or to the Supreme Court of the United States, sitting at .....) under the rules of such court in such cases made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of him be made.

His petition having been filed, it must be allowed, for in all appealable cases, the right of appeal is absolute, the only discretion which the judge can exercise being as to the sufficiency of the

appeal bond, and if he refuses to allow the appeal mandamus may be resorted to.

No particular form of allowance is required, the usual proceeding being an indorsement upon the petition, to the following effect:

Appeal allowed upon giving bond as required by law for the sum of $.....

.....

Judge.

Or the following separate order of allowance may be made:

ORDER ALLOWING APPEAL.

(TITLE OF COURT AND CAUSE)

On motion of ....., Esq., solicitor and counsel for complainant, it is hereby ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein, be, and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to said Supreme Court of the United States. It is further ordered that the bond on appeal be fixed at the sum of $..... (If supersedeas be desired, here insert, "the same to act as a supersedeas bond and also as a bond for costs and damages on appeal.")

Dated ..... 191...,

.....

Justice

The mere approval of the bond or signing of the petition by the judge amounts to an allowance of the appeal, and if the petition for appeal and assignment of errors are filed within the time allowed, a subsequent allowance of the appeal operates by relation as of that time, and the appeal is properly perfected within that time.

§ 2059. Assignment of Errors. With the petition for appeal, and in addition to it, there must be filed an assignment of errors.[17] This is a detailed statement of each of the alleged errors relied upon and intended to be urged by the appellant. It differs from the

[17] C. C. A. Rule 11; Supreme Court Rule 35.

petition for appeal in that it must set out specifically and directly every respect in which the decree is erroneous and the reason why it is so; while the petition asks for the allowance of the appeal in general terms.

The assignment of errors must be so complete and clear that the court may obtain therefrom a specific statement of the question presented without reference to the brief or any other source outside of the assignment itself.[18]

The following form is suggested:

ASSIGNMENT OF ERRORS.

(TITLE OF TRIAL COURT AND CAUSE) IN EQUITY.

Now comes the defendant in the above entitled cause and files the following assignment of errors upon which he will rely upon his prosecution of the appeal in the above entitled cause, from the decree made by this Honorable court on the ..... day of ..... 191...

I.

That the United States district court for the ..... district of ..... erred in over-ruling the demurrer interposed by the defendant and appellant to the original complaint filed in the cause.

II.

(State in separate paragraphs each error complained of.)

WHEREFORE the appellant prays that said decree be reversed and that said district court for the ..... district of ..... be ordered to enter a decree reversing the decision of the lower court in said cause.

.....

Attorneys for Appellant.

§ 2060. Citation. Except in cases of appeals allowed in open court at the term during which the decree appealed from was rendered, a citation returnable at the same term with the appeal or writ or error is necessary to perfect jurisdiction of the appeal or writ or error, unless waived.[19]

[18] Van Gunder v. Iron Co. 52 Fed. 838, 3 C. C. A. 294; Grape Creek Co. v. Farmers Co. 63 Fed. 891, 12 C. C. A. 350; Ibid.

[19] Jacobs v. George, 150 U. S. 415, 37 L. ed. 1127, 14 Sup. Ct. Rep. 159; Hewitt v. Filbert, 116 U. S. 142, 29 L. ed. 581, 6 Sup. Ct. Rep. 319; West v. Irwin, 54 Fed. 419, 4 C. C. A. 401.

§ *999, R. S., Comp. St. 1901, p. 712, 4 F. S. A. 609.* "When the writ is issued by the Supreme Court to a circuit court, the citation shall be signed by a judge of such circuit court, or by a justice of the Supreme Court, and the adverse party shall have at least thirty days' notice; and when it is issued by the Supreme Court to a state court, the citation shall be signed by the chief justice or judge, or chancellor of said court, rendering the judgment or passing the decree complained of, or by a justice of the Supreme Court of the United States, and the adverse party will have at least thirty days' notice."

§ *998, R. S., Comp. St. 1901, p. 712, 4 F. S. A. 609.* "When the writ is issued by a circuit court to a district court, the citation shall be signed by the judge of such district court, or by the circuit judge of such circuit court, or by a justice of the Supreme Court, and the adverse party shall have at least twenty days' notice."

This citation is a formal notice of the allowance of an appeal, is intended only for the purpose of notice, is not jurisdictional, and may be waived or substituted by proof of other equivalent notice.[20]

No particular form of citation is required by statute, but, in the absence of a printed form supplied by the court from which the appeal is taken, the following is suggested:

CITATION ON APPEAL.

(TITLE OF TRIAL COURT AND CAUSE)

United States of America, ss.

To ..... and ....., GREETING:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the ..... day of ....., A. D. 191... Pursuant to an order allowing an appeal filed and entered in the clerk's office of the district court of the United States for the ..... district of ..... from a final decree signed, filed, and entered on the ..... day of ....., 191.. in that certain suit, being in equity No. .... wherein ..... is plaintiff and you are defendant and appellee, to show cause, if any there

[20] Farmers Loan & Trust Co. v. C. & N. R. R. Co. 73 Fed. 317, 19 C. C. A. 477; Dayton v. Lash, 94 U. S. 112, 24 L. ed. 33; Griggsby v. Purcell, 99 U. S. 505, 25 L. ed. 354; R. R. Co. v. Blair, 100 U. S. 661, 25 L. ed. 587; Jacobs v. George, 150 U. S. 415, 37 L. ed. 1127, 14 Sup. Ct. Rep. 159.

be, why the decree rendered against the said appellant, as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

Witness the Honorable ..... United States district judge for the ..... district of ..... this ..... day of ..... 191.. and of the Independence of the United States .....

.....

U. S. District Judge for the
..... District of .....

§ 2061. Bond on Appeal. The petition for appeal having been filed, accompanied by the assignment of errors, a bond is required of the appellant payable to the appellee, conditioned as provided in the following quoted section:

> § *1000, R. S., Comp. St. 1901, p. 712, 4 F. S. A. 612.* "Every justice or judge signing a citation on any writ of error shall, except in cases brought up by the United States or by direction of any department of the government, take good and sufficient security that the plaintiff in error or the appellant shall prosecute his writ or appeal to effect, and, if he fail to make his plea good, shall answer all damages and costs, where the writ is a supersedeas and stays execution, or all costs only where it is not a supersedeas as aforesaid."

This bond must be approved before the appeal is perfected, but it is not jurisdictional, and if not given at the time when the appeal is taken, the failure to do so constitutes a mere irregularity which may be cured by the Supreme Court allowing the appellant to file the proper bond within a reasonable time.[21] In accordance with this rule a bond furnished one month after the appeal is taken has been held to be furnished within a reasonable time,[22] while a lapse of four years where permission to supply the bond has never been asked has been held to constitute ground for dismissal of appeal.[23] Not being jurisdictional, bond may be waived by the appellees.[24]

[21] Brown v. McConnel, 124 U. S. 489, 31 L. ed. 495, 8 Sup. Ct. Rep. 559; Schenck v. Diamond Match Co. 73 Fed. 22, 19 C. C. A. 352; Anson v. Railroad Co. 23 How. 1, 16 L. ed. 517; Davidson v. Lainer, 4 Wall. 447, 18 L. ed. 377; Seymour v. Freed, 5 Wall. 822, 18 L. ed. 564.

[22] Schenck v. Diamond Match Co. 73 Fed. 22, 19 C. C. A. 352.

[23] Beardsley v. Arkansas & L. R. R. Co. 158 U. S. 123, 39 L. ed. 919, 15 Sup. Ct. Rep. 786.

[24] Kingsbury v. Buckner, 134 U. S. 650, 33 L. ed. 1047, 10 Sup. Ct. Rep. 638.

The sufficiency of the security is discretionary with the trial judge, and he may, within his discretion, accept a bond signed by any number of sureties, or one in which they are either jointly and severally or jointly or severally bound, or one in which each surety is only bound severally for a specified part of the security.[25] The security required upon appeal must be taken by the justice or judge signing the citation. He cannot delegate this power to the clerk,[26] but if he should do so, the appeal will not usually be dismissed, but opportunity will be afforded the appellant to secure a bond properly approved by the judge.[27]

All obligees should be individually named in the bond to insure certainty, but the fact that they are not, as where it is made payable to John Smith et al., will not be considered grounds for the dismissal of the appeal, and opportunity will be given to file a proper bond.[28] On the other hand, if others besides the party from whom the decree appealed from is taken are named as obligees in the bond, its validity is not thereby affected.[29]

The bond may be in the following form:

BOND ON APPEAL.

(TITLE OF TRIAL COURT AND CAUSE)

KNOW all men by these presents, that we, ... as principal, and ..... and ..... as sureties, of the county of ....., State of ..... are held and firmly bound unto ..... in the sum of $..... lawful money of the United States, to be paid to them and their respective executors, administrators and successors; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators, by these presents.

Sealed with our seals and dated this ..... day of ..... 191...

Whereas the above named ....., has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment of the district court for the ..... district of ....., in the above entitled cause.

[25] New Orleans Ins. Co. v. Albro Co. 112 U. S. 506, 28 L. ed. 809, 5 Sup. Ct. Rep. 289.

[26] Freeman v. Clay, 48 Fed. 849, 1 C. C. A. 115; O'Reilley v. Edrington, 96 U. S. 724, 24 L. ed. 659; Martin v. Hunter's Lessee, 1 Wheat. 361, 4 L. ed. 111; Haskins v. St. L. & E. R. R. Co. 109 U. S. 106, 27 L. ed. 873, 3 Sup. Ct. Rep. 72.

[27] Ibid.

[28] Swift & Co. v. Kortrecht, et al. 110 Fed. 328, 49 C. C. A. 68.

[29] Hill v. C. & E. Railway Company, 129 U. S. 170, 32 L. ed. 651, 9 Sup. Ct. Rep. 269.

NOW THEREFORE, the condition of this obligation is such that if the above named ..... shall prosecute his said appeal to effect and answer all costs if he fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

.....
.....
.....

STATE OF .....
COUNTY OF ..... } ss

On the ..... day of ..... 191.., personally appeared before me .... and ....., respectively known to me to be the persons described in and duly executed the foregoing instrument as parties thereto, and respectively acknowledged, each for himself, that they executed the same as their free act and deed for the purposes therein set forth.

And the said ..... and ....., being respectively by me duly sworn, says, each for himself and not one for the other, that he is a resident and householder of the said county of ..... and that he is worth the sum of $..... over and above his just debts and legal liability and property exempt from execution.

.....
.....
.....

Subscribed and sworn to before me this .... day of .... A. D. 191...

(SEAL) .....

Notary Public.

The within bond is approved both as to sufficiency and form this ..... day of ....., 191...

.....

Justice.

§ 2062. No Bond Required of United States.

§ *1001, R. S., Comp. St. 1901, p. 713, 4 F. S. A. 615.* "Whenever a writ of error, appeal, or other process in law, admiralty, or equity issues from or is brought up to the Supreme Court or a circuit court, either by the United States or by direction of any department of the government, no bond, obligation, or security shall be required from the United States, or from any party acting under the direction aforesaid, either to prosecute said suit or to answer in damages or costs. In case of an adverse decision, such costs as by law are taxable against the United States, or against the party acting by direction as aforesaid, shall be paid out of the contingent fund of the department under whose directions the proceedings were instituted."

§ 2063. Supersedeas.

§ *1007, R. S., Comp. St. 1901, p. 714, 4 F. S. A. 618.* "In any case where the writ of error may be a supersedeas, the defendant may obtain such supersedeas by serving the writ of error by lodging a copy thereof for the adverse party in the clerk's office, where the record remains within sixty days, Sundays exclusive, after the rendering of a judgment complained of, and giving the security required by law within sixty days after the rendition of such judgment or afterward, with the permission of a justice or judge of the appellate court. And in such cases, where a writ of error may be a supersedeas, executions shall not be issued until the expiration of ten days."

Under this section, which applies alike to appeals and writs of error, it is held that supersedeas, if applied for in strict compliance with the statute, is a matter of right,[30] no discretion being vested in the judge, other than as to the amount of the bond, except in appeals from injunction, where the granting of a supersedeas is discretionary.[31]

Strict compliance with the statute is required, however; for supersedeas is purely a statutory remedy, and unless the prescribed steps are taken within sixty days, Sundays excluded, from the rendering of the decree, it is not within the power of the court to award a supersedeas,[32] although the bond required [33] may be given after that time, with the permission of the appellate court. Commenting upon the clause extending the time for giving the bond, the Supreme Court says in the case of Kitchen v. Randolph, 93 U. S. 86, 23 L. ed. 810:

"Had the section stopped here (the first clause) a plaintiff in error or appellant would have been compelled to elect, when he sued out his writ of error or took his appeal, whether he would have a supersedeas or not; because it is made one of the conditions of the stay of proceedings that the requisite security shall be given, upon the issuing of the citation. Having once made

[30] McCourt v. Singersbigger, 145 Fed. 103, 76 C. C. A. 73, 7 Ann. Cas. 287.
[31] § 2032, supra.
[32] Sage v. Cent. Ry. Co. 93 U. S. 417, 23 L. ed. 935; N. E. Ry. v. Hyde, 101 Fed. 398, 41 C. C. A. 404.
[33] § 2061, supra.

his election, he would be concluded by what he had done. But Congress foreseeing, undoubtedly, that cases might arise in which serious loss would result from such a rule, went further, and, in a subsequent part of the section, provided that if a writ of error had been served, as required in the first paragraph, a stay might be had as a matter of right by giving the required security within sixty days, and afterwards, as a matter of favor, if permission could be obtained from the designated justice or judge. Thus prompt action in respect to the writ was required and indulgence granted only as to the security." [34]

The supersedeas order may be incorporated in the bond,[35] or it may be in the form of a separate order as follows:

SUPERSEDEAS ORDER.

(TITLE OF TRIAL COURT AND CAUSE)

This cause coming on to be heard this ..... day of ..... 191.., upon the application of the appellant for an appeal to the Supreme Court of the United States and said appeal having been allowed it is ordered that the same shall operate as a supersedeas, the said appellant having executed bonds in the sum of $..... as provided by law and the clerk is hereby directed to stay the mandate of the district court of the ..... district of ....., until the further order of this court.

.....
Justice.

The effect of a supersedeas is to hold in abeyance all proceedings in the court below, until the decree is affirmed.[36]

§ 2064. Injunction Pending Appeal.

Equity Rule 74.[b] "When an appeal from a final decree, in an equity suit, granting or dissolving an injunction, is allowed by a justice or a judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending, modifying, or restoring the injunction during the pendency of the appeal, upon such terms, as to bond or otherwise, as he may consider proper for the security of the rights of the opposite party."

34 Kitchen v. Randolph, 93 U. S. 86, 90, 23 L. ed. 810.

35 § 2061, supra.

36 Ransom v. Pierre, 101 Fed. 669, 41 C. C. A. 585; Hovey v. McDonald, 109 U. S. 150, 27 L. ed. 888, 3 Sup. Ct. Rep. 136.

b See Equity Rule 74, with Annotations, in Appendix, post.

§ 2065. Proceeding in Forma Pauperis.

Act of July 20, 1892, Comp. Stat. 1901, p. 706, 2 F. S. A. 294. "Any citizen of the United States entitled to commence any suit or action in any court of the United States may commence and prosecute to conclusion any such suit or action without being required to prepay fees or costs, or give security therefor before or after bringing a suit or action, upon filing in said court a statement under oath, in writing, that, because of his poverty he is unable to pay the costs of said suit or action which he is about to commence, or to give security for the same, and that he believes he is entitled to the redress he seeks by such suit or action, and setting forth briefly the nature of his alleged cause of action."

After several years of conflicting decisions, during which time some courts construed this statute to apply to appellate procedure as well as original proceedings, while others took the opposite view, the Supreme Court has expressly decided that the act does not apply to appellate procedure, and that the Supreme Court, in the absence of statute, has no authority to allow an appeal or writ of error *in forma pauperis*.[37]

§ 2066. Transcript on Appeal and Error.

Pt. Supreme Court Rule 8. "1. The clerk of the court to which any writ of error may be directed shall make return of the same, by transmitting a true copy of the record, and of the assignment of errors, and of all proceedings in the case, under his hand and the seal of the court. . . .

"2. In all cases brought to this court, by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

"3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court, shall be filed.

"4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit court, or district

[37] Bradford v. S. R. R. Co. 195 U. S. 243, 49 L. ed. 178, 25 Sup. Ct. Rep. 55; Taylor v. Adams Express Co. 164 Fed. 616, 90 C. C. A. 526.

court exercising circuit court jurisdiction, that original papers of any kind should be inspected in this court, upon writ of error or appeal, such presiding judge may make such rule or order for the safe-keeping, transporting, and return of such original papers as to him may seem proper, and this court will receive and consider such original papers in connection with the transcript of the proceedings."

Pt. C. C. A. Rule 14. "1. The clerk of the court to which any writ of error may be directed shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and the seal of the court.

"2. In all cases brought to this court by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

"3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings, which are necessary to the hearing in this court, shall be filed.

"4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe-keeping, transporting, and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings."

§ *698, R. S., Comp. St. 1901, p. 568, 4 F. S. A. 446.* "Upon the appeal of any cause in equity, or of admiralty and maritime jurisdiction, or of prize or no prize, a transcript of the record, as directed by law to be made, and copies of the proofs, and of such entries and papers on file as may be necessary on the hearing of the appeal, shall be transmitted to the Supreme Court: *Provided,* That either the court below or the Supreme Court may order any original document or other evidence to be sent up, in addition to the copy of the record, or in lieu of a copy of a part thereof. And on such appeals no new evidence shall be received in the Supreme Court, except in admiralty and prize causes."

Record on appeal as made up by the clerk of the lower court if complete contains the following papers and proceedings: The

bill of complaint; process or subpœna, with the proper return of the marshal indorsed thereon; the answer or other defensive pleading; the testimony, exhibits, etc., of both parties, plaintiff and defendant; the opinion and decree of the court; the petition for appeal; the assignment of error; bond on appeal; the citation on appeal and the clerk's certificate.[38]

It is not always necessary, however, that all of these papers and proceedings are necessary for a hearing of the appeal, and therefore it may be stipulated by counsel for the opposing party that certain proceedings may be omitted from the record.

If, when the record reaches the appellate court, anything has been omitted therefrom which is considered necessary for a hearing of the appeal, the proper procedure is for counsel to suggest to the appellate court a diminution of the record, whereupon the omitted portion will, if considered necessary by the court, be ordered sent up.

§ 2067. Reduction and Preparation of Record on Appeal and Error to Supreme Court.

Pt. Supreme Court Rule 8, Sub. 1. "In order to enable the clerk of the court (to which any writ of error may be directed) to perform such duty (*i. e.*, transmitting copy of the record), and for the purpose of reducing the size of transcripts of records in cases brought to this court by appeal or writ of error, by eliminating all papers not necessary to the consideration of questions to be reviewed, it shall be the duty of the appellant or plaintiff in error, or his attorney, to file with the clerk of the lower court, together with proof or acknowledgment of service of a copy on the appellee or defendant in error, or his counsel, a precipe, which shall indicate the portions of the record to be incorporated into the transcript of the record on such appeal or writ of error. Should the appellee, or defendant in error, or his counsel, desire additional portions of the record incorporated into the transcript of the record to be filed in this court, he shall file with the clerk of the lower court his precipe also, within ten days thereafter (unless the time shall be enlarged by a judge of the lower court), indicating such additional portions of the record desired by him.

[38] See instruction for preparation of record contained in Rules of C. C. A. for the 4th and 8th Circuits, Appendix, post.

"The clerk of the lower court shall transmit to this court, as the transcript of the record in the case, only the portions of the record below designated by both parties as above provided.

"The parties or their counsel, however, may agree, by written stipulation to be filed with the clerk of the lower court, the portions of the record which shall constitute the transcript of record on appeal, or writ of error, and the clerk in such case shall transmit only the papers designated in such stipulation.

"If this court shall find that portions of the record unnecessary to a proper presentation of the case have been incorporated into the transcript by either party, the court may order that the whole or any part of the clerk's fee for supervising the printing, and of the cost of printing the record, be paid by the offending party."

§ 2068. Reduction and Preparation of Record under New Equity Rules.

Equity Rule 75.[c] "In case of appeal:

"(a) It shall be the duty of the appellant or his solicitor to file with the clerk of the court from which the appeal is prosecuted, together with proof or acknowledgment of service of a copy on the appellee or his solicitor, a precipe which shall indicate the portions of the record to be incorporated into the transcript on such appeal. Should the appellee or his solicitor desire additional portions of the record incorporated into the transcript, he shall file with the clerk of the court his precipe also within ten days thereafter, unless the time shall be enlarged by the court or a judge thereof, indicating such additional portions of the record desired by him.

"(b) The evidence to be included in the record shall not be set forth in full, but shall be stated in simple and condensed form, all parts not essential to the decision of the questions presented by the appeal being omitted and the testimony of witnesses being stated only in narrative form, save that if either party desires it, and the court or judge so directs, any part of the testimony shall be reproduced in the exact words of the witness. The duty of so condensing and stating the evidence shall rest primarily on the appellant, who shall prepare his statement thereof and lodge the same

[c] See Equity Rule 75, with Annotations, in Appendix, post.

in the clerk's office for the examination of the other parties at or before the time of filing his precipe under paragraph (a) of this rule. He shall also notify the other parties or their solicitors of such lodgment, and shall name a time and place when he will ask the court or judge to approve the statement, the time so named to be at least ten days after such notice. At the expiration of the time named or such further time as the court or judge may allow, the statement, together with any objections made or amendments proposed by any party, shall be presented to the court or the judge, and if the statement be true, complete and properly prepared, it shall be approved by the court or judge, and if it be not true, complete or properly prepared, it shall be made so under the direction of the court or judge and shall then be approved. When approved, it shall be filed in the clerk's office and become a part of the record for the purposes of the appeal.

"(c) If any difference arise between the parties concerning directions as to the general contents of the record to be prepared on the appeal, such difference shall be submitted to the court or judge in conformity with the provisions of paragraph (b) of this rule and shall be covered by the directions which the court or judge may give on the subject."

Equity Rule 76.[d] "In preparing the transcript on an appeal, especial care shall be taken to avoid the inclusion of more than one copy of the same paper and to exclude the formal and immaterial parts of all exhibits, documents and other papers included therein; and for any infraction of this or any kindred rule the appellate court may withhold or impose costs as the circumstances of the case and the discouragement of like infractions in the future may require. Costs for such an infraction may be imposed upon offending solicitors as well as parties.

"If, in the transcript, anything material to either party be omitted by accident or error, the appellate court, on a proper suggestion or its own motion, may direct that the omission be corrected by a supplemental transcript."

Equity Rule 77.[e] "When the questions presented by an appeal can be determined by the appellate court without an

[d] See Equity Rule 76, with Annotations, in Appendix, post.
[e] See Equity Rule 77, with Annotations, in Appendix, post.

examination of all the pleadings and evidence, the parties, with the approval of the district court or the judge thereof, may prepare and sign a statement of the case showing how the questions arose and were decided in the district court and setting forth so much only of the facts alleged and proved, or sought to be proved, as is essential to a decision of such questions by the appellate court. Such statement, when filed in the office of the clerk of the district court, shall be treated as superseding, for the purposes of the appeal, all parts of the record other than the decree from which the appeal is taken, and, together with such decree, shall be copied and certified to the appellate court as the record on appeal."

§ 2069. Printing and Filing of Record on Appeal and Error to Circuit Courts of Appeal.

Paragraph 1, Act Feb. 13, 1911, ch. 147, Comp. St. 1911, p. 275, 1912 Supp. F. S. A. v. 1, p. 255. "That in any cause or proceeding wherein the final judgment or decree is sought to be reviewed on appeal to, or writ of error from, a United States circuit court of appeals the appellant or plaintiff in error shall cause to be printed under such rules as the lower court shall prescribe, and shall file in the office of the clerk of such circuit court of appeals at least twenty days before the case is called for argument therein, at least twenty-five printed transcripts of the record of the lower court, and of such part or abstract of the proofs as the rules of such circuit court of appeals may require, and in such form as the Supreme Court of the United States shall by rule prescribe, one of which printed transcripts shall be certified under the hand of the clerk of the lower court and under the seal thereof, and shall furnish three copies of such printed transcript to the adverse party at least twenty days before such argument: *Provided,* That either the court below or the circuit court of appeals may order any original document or other evidence to be sent up in addition to the printed copies of the record or in lieu of printed copies of a part thereof; and no written or typewritten transcript of the record shall be required."

§ 2070. Printing and Filing of Record on Appeal and Error to Supreme Court—Use of Record in Circuit Court of Appeals as Part of Transcript.

Paragraph 2, Act Feb. 13, 1911, ch. 47, Comp. St. 1911, p. 275, 1912 Supp. F. S. A. v. 1, p. 255. "That in any

cause or proceeding wherein the final judgment or decree is sought to be reviewed on appeal to or by writ of error or of certiorari from the Supreme Court of the United States, in which the record has been printed and used upon the hearing in the court below and which substantially conforms to the printed record in said Supreme Court, if there have been at the time of filing the record in the court below twenty-five copies of said printed record, in addition to those provided in the preceding section, lodged with the clerk of the court below, one copy thereof shall be used by the clerk of the court below in the preparation and as a part of the transcript of the record of the court below; and no fee shall be allowed the clerk of the court below in the preparation of the transcript for such part thereof as is included in said printed record so lodged with him. And the clerk of the court below, in transmitting the transcript of record to the Supreme Court of the United States for review, shall at the same time transmit the remaining uncertified copies of the printed record so lodged with him, which shall be used in the preparation and as a part of the printed record in the Supreme Court of the United States, and the clerk's fee for preparing the record for the printer, indexing the same, supervising the printing, and binding and distributing the copies, shall be at such rate per folio thereof, exclusive of the printed record so furnished by the clerk of the court below, as the Supreme Court of the United States may from time to time by rule prescribe; and no written or typewritten transcript of so much of the record as shall have been printed as herein provided shall be required. (36 Stat. at L. 901.)"

§ 2071. One Record Sufficient When Both Parties Appeal to Supreme Court Direct.

§ 1013, R. S., Comp. St. 1901, p. 716, 4 F. S. A. 612. "Where appeal is duly taken by both parties from the judgment or decree of a circuit or district court to the Supreme Court, a transcript of the record filed in the Supreme Court by either appellant may be used on both appeals, and both shall be heard thereon in the same manner as if records had been filed by the appellants in both cases."

§ 2072. Time for Return of Appeals and Writs of Error.

Supreme Court Rule 8, Subd. 5. "All appeals, writs of error, and citations must be made returnable not exceeding

thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day, except in writs of error and appeals from California, Oregon, Nevada, Washington, New Mexico, Utah, Montana, Arizona, Wyoming, North Dakota, South Dakota, Alaska, Idaho, Hawaii, and Porto Rico, when the time shall be extended to sixty days, and from the Philippine Islands to one hundred twenty days."

C. C. A. Rule 14, Sub. 5. "All appeals, writs of error, and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day."

§ 2073. Summary of Procedure on Appeal. In all appeals, whether from the district courts to the circuit courts of appeal, or from the district courts direct to the Supreme Court, or from the circuit courts of appeal to the Supreme Court in those cases where such appeals may be taken, the following steps must be taken in order to get the record into the appellate court:

First. Except in cases of appeals allowed in open court at the time when the decree appealed from was rendered, a petition for appeal (or writ of error) in writing must be addressed to the lower court, or, if in vacation, to the judge thereof.

Second. With this petition there must be filed an assignment of errors.

Third. The allowance of the appeal must be indorsed upon the petition by the justice or judge of the lower court, or a separate order allowing the appeal must be signed by him.

Fourth. Before the appeal can be perfected a satisfactory bond on appeal must be furnished by the appellant, which bond may act as a supersedeas if desired. This bond may be given either at the time when the appeal is allowed, or within a reasonable time thereafter, and must be approved by the justice or judge allowing the appeal, and by no one else.

Fifth. The citation or notice of appeal, in cases where it is required, must be signed by the judge and served upon the appellee.

All of these papers and proceedings are filed with the clerk of the court below, and constitute a part of the record on appeal.

§ 2074. Review of Final Decisions of Circuit Courts of Appeal upon Certiorari.

Pt. § 240, Judicial Code,[f] *36 Stat. at L. 1157, Comp. St. 1911, p. 228, 1912 Supp. F. S. A. v. 1, p. 232.* "In any case, civil or criminal, in which the judgment or decree of a circuit court of appeals is made final by the provisions of this title, it shall be competent for the Supreme Court to require, by certiorari or otherwise, upon the petition of any party thereto, any such case to be certified to the Supreme Court for writs of review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court."

Before the petition for a writ of certiorari can be submitted to the Supreme Court, the following requirements must be complied with:

Before the petition is placed on the docket, there must be filed with the clerk of the Supreme Court of the United States the original petition for the writ, bearing the signature of counsel; a certified copy of the transcript of the record, including all proceedings in the circuit court of appeals; and appearance of counsel for petitioner signed by a member of the bar of the Supreme Court of the United States; and a deposit of twenty-five dollars on account of costs.

In addition to the above, before the petition can be submitted the Supreme Court requires "about two weeks' notice" of the date fixed for the submission. Satisfactory proof of service of this notice, together with proof of service of copies of petition and brief upon counsel for the respondent, must be made and filed with the clerk of the Supreme Court.

Twenty-five printed copies of the petition, together with twenty-five printed copies of brief in support thereof, if there are any such, and at least nine uncertified copies of the record, containing all proceedings in the circuit court of appeals, must be filed with the clerk before the petition is submitted.

[f] For Annotation of this § 240, Judicial Code, see footnote [a], ante, our § 840.

No oral argument upon petition for writs of certiorari is permitted, and if the respondent wishes to oppose the petition, he must file twenty-five copies of his brief with the clerk of the Supreme Court. The respondent must also enter an appearance signed by a member of the bar of the Supreme Court, and the brief of respondent must also be signed by a member of that bar. The presence of such counsel, however, is not necessary when the petition is submitted.

All petitions for writs of certiorari must be presented upon Monday (motion day), and all papers in the case must be filed not later than the Saturday preceding the Monday fixed for submission of the petition.

The above requirements constitute the substance of instructions issued by James H. McKenney, clerk of the Supreme Court of the United States.[40]

The following forms are suggested:

PETITION FOR WRIT OF CERTIORARI.

(TITLE OF COURT AND CAUSE)

To the Honorable the Supreme Court of the United States:

The petition of ..... respectfully shows to this Honorable Court (here state facts and proceedings numbered in separate paragraphs leading to and including the decree of the circuit court of appeals).

A certified copy of the entire record of said case in the said circuit court of appeals is hereby furnished, attached to and made a part of this application and marked exhibit "A" in compliance with Rule 37 of this Honorable Court.

Your petitioner is advised and believes that the said judgment of the United States circuit court of appeals in said case is erroneous, and that this Honorable Court should require the said case to be certified to it for its review and determination in conformity with the provision in § 240, Judicial Code, said case being made final in said circuit court of appeals by the provision § 128, Judicial Code.

The said case was decided in said circuit court of appeals (here set forth argument advanced against the decision of the circuit court of appeals and the reasons why it should be reviewed by the Supreme Court).

WHEREFORE your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this court, directed to the United States circuit court of appeals for the ..... circuit, commanding the said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said

[40] See Appendix.

circuit court of appeals in the said case, entitled ..... v. ..... No. ...., to the end that the said case may be reviewed and determined by this court as provided by section 240, Judicial Code, or that your petitioner may have such other or further relief or remedy in the premises as this court may deem appropriate and in conformity with said provision of the Judicial Code and that the said judgment of the said circuit court of appeals in the said case and every part thereof may be reversed by this Honorable Court.

.....
Petitioner.

(Verification.)

WRIT OF CERTIORARI.

(TITLE OF COURT AND CAUSE)
United States of America, ss.

The President of the United States of America, to the Honorable Judges of the United States circuit court for the ..... circuit, GREETING:

Being informed that there is now pending before you a suit in which ..... is appellant (or plaintiff in error) and ..... is appellee or (defendant in error,) which suit was removed to said circuit court of appeals by virtue of an appeal (or a writ of error) from the district court of the United States for the ..... district of .....; and we being willing for certain reasons, that the said cause and the record and proceedings therein should be certified by said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable ....., Chief Justice of the Supreme Court of the United States.

.....
Clerk of the Supreme Court.

§ 2075. Certification by Circuit Courts of Appeal to Supreme Court.

Pt. § 239, Judicial Code,[x] *36 Stat. at L. 1157, Comp. St. 1911, p. 228, 1912 Supp. F. S. A. v. 1, p. 231.* "In any case within its appellate jurisdiction . . . the circuit court of appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision; and thereupon the Supreme Court may either give its instruction on the questions and propositions

[x] For Annotation of this § 239, Judicial Code, see footnote [a], ante, our § 840.

certified to it, which shall be binding upon the circuit court of appeals is such case, or it may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal."

In view of the final clause of the section above quoted, the only difference in procedure upon a review of this class of cases is in the manner of getting the questions before the Supreme Court, subsequent proceedings being the same as if the cause had been brought there by writ of error or appeal.

The form of the certificate is substantially as follows:

CERTIFICATE OF QUESTIONS BY CIRCUIT JUDGES TO THE SUPREME COURT.

The United States Circuit Court of Appeals for the ..... Circuit.
(Title of Cause.)

Appeal from the District Court of the United States for the ..... District of .....

This cause coming on for hearing before the court after full argument, it is ordered, in view of the important questions arising with the record and the doubt which the court has as to the correct decision thereof that certain questions shall be certified to the Supreme Court of the United States for its instruction thereon, that accompanying said question there shall also be a statement from which such question can be fully understood; which question and the statement accompanying them, are as follows:
(Questions and statements are here set forth.)

(To be signed by all judges.)

§ 2076. Appellate Procedure—District Courts of Alaska to the Supreme Court.

Pt. § 247, Judicial Code,[h] *36 Stat. at L. 1158, Comp. St. 1911, p. 230, 1912 Supp. F. S. A. v. 1, p. 234.* "Appeals and writs of error may be taken and prosecuted from final judgments and decrees of the district court for the district of Alaska or any division thereof, direct to the Supreme Court of the United States (in the cases enumerated) within the same time, in the same manner, and under the same regula-

[h] For Annotation of this § 247, Judicial Code, see footnote 1, ante, our § 2015.

tions as writs of error and appeals are taken from the district court to the Supreme Court."

This procedure is included within the first class of appeals enumerated in § 2050, supra, and the practice is the same as that in appeals from district courts direct to the United States Supreme Court, heretofore described.

§ 2077. Appellate Procedure—From Supreme and District Courts of Porto Rico.

Pt. § 244, Judicial Code,[i] *36 Stat. at L. 1157, Comp. St. 1911, p. 229, 1912 Supp. F. S. A. v. 1, p. 234.* "Such writs of error and appeals (from final judgments and decrees of the Supreme Court of and the United States district court for Porto Rico in the cases enumerated in chapter 39) shall be taken within the same time, in the same manner, and under the same regulation as writs of error and appeals are taken to the Supreme Court of the United States from the district courts."

Appellate procedure in this class of cases therefore falls within the first class of appeals enumerated in § 2050, supra, and what has been said with regard to such procedure applies as well to appeals and writs of error from the courts of Porto Rico.

§ 2078. Appellate Procedure—From Supreme Court of Philippines.

Pt. § 248, Judicial Code,[j] *36 Stat. at L. 1158, Comp. St. 1911, p. 230, 1912 Supp. F. S. A. v. 1, p. 234.* "Such final judgments and decrees (of the supreme court of the Philippine Islands in the cases enumerated in chapter 39) may and can be reviewed, reversed, modified, or affirmed by said supreme court on appeal or writ of error by the party aggrieved within the same time, in the same manner, under the same regulation, and by the same procedure, as far as applicable, as the final judgments and decrees of the district courts of the United States."

[i] For Annotation of this § 244, Judicial Code, see footnote [h], ante, our § 2013.

[j] For Annotation of this § 248, Judicial Code, see footnote [k], ante, our § 2016.

The procedure upon appeal in these cases also falls within the first classification enumerated in § 2050, supra.

§ 2079. Appellate Procedure—From District of Columbia.

Pt. § 250, Judicial Code,[k] *36 Stat. at L. 1159, Comp. St. 1911, p. 231, 1912 Supp. F. S. A. v. 1, p. 235.* "Writs of error and appeals (from final judgments or decrees of the court of appeals of the District of Columbia in the cases enumerated and discussed in § 2018 of chapter 39) shall be taken within the same time, in the same manner, and under the same regulation, as writs of error and appeals are taken from the circuit courts of appeals to the Supreme Court of the United States."

Appellate procedure in the cases covered by this section falls within the third class of appeals enumerated in § 2050 infra, and the discussion of that class of appeals applies to appellate procedure under this section.

§ 2080. Appellate Procedure—From District of Columbia, Where Decision of Circuit Court of Appeals is otherwise Final.

§ 251, Judicial Code,[l] *36 Stat. at L. 1159, Comp. St. 1911, p. 232, 1912 Supp. F. S. A. v. 1, p. 236.* "In any case in which the judgment or decree of such court of appeals is made final by the section last preceding, it shall be competent for the Supreme Court of the United States to require, by certiorari or otherwise, any such case to be certified to it for review and determination with the same power and authority in the case as if it had been carried by writ of error or appeal to said Supreme Court. It shall also be competent for said court of appeals, in any case in which its judgment or decree is made final under the section last preceding, at any time to certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision; and thereupon the Supreme Court may either give its instruction on the question and propositions certified to it,

[k] For Annotation of this § 250, Judicial Code, see footnote [m], ante, our § 2018.

[l] For Annotation of this § 251, Judicial Code, see footnote [n], ante, our § 2019.

which shall be binding upon said court of appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal."

The language of this section is substantially the same as that of §§ 239 and 240, Judicial Code, which applies to appeals from circuit courts of appeals of the various circuits to the Supreme Court, and the procedure under the above-quoted section is the same as that discussed under §§ 239, 240, Judicial Code in §§ 2074, 2075, supra.

§ 2081. Appellate Procedure—From Supreme Court of Hawaii to United States Supreme Court.

Pt. § 246, Judicial Code,[m] *36 Stat. at L. 1158, Comp St. 1911, p. 230, 1912 Supp. F. S. A. v. 1, p. 233.* "Writs of error and appeals from the final judgments and decrees of the supreme court of the territory of Hawaii may be taken and prosecuted to the Supreme Court of the United States within the same time, in the same manner, under the same regulations, and in the same classes of cases in which writs of error and appeals from the final judgments and decree of the highest court of the state in which a decision in a suit could be had, may be taken and prosecuted to the Supreme Court of the United States under the provisions of § 237 Judicial Code'[41] and also in all cases wherein the amount involved exclusive of costs, . . . exceeds the sum or value of $5,000."

The language of this section providing that "writs of error and appeals . . . may be taken . . . within the same time, in the same manner, and under the same regulations, and in the same classes of cases in which writs of error and appeals from the final judgments and decrees of the highest court of the state, etc.," is misleading, inasmuch as there is no appeal from

[41] See ch. 11.

[m] For Annotation of this § 246, Judicial Code, see footnote [1], ante, our § 2014.

the decisions of a state court of last resort; all such cases, whether at law or in equity, being reviewed by writ of error.

The procedure in such cases is governed by § 1003, R. S., Comp. St. 1901, p. 713, 4 F. S. A. 616,[42] and is identical with that upon error to the United States Supreme Court, discussed in chapter 28.

The following form of writ may be employed:

WRIT OF ERROR TO THE SUPREME COURT OF HAWAII.

(TITLE OF TRIAL COURT AND CAUSE.)
THE UNITED STATES OF AMERICA SS.

The President of the United States of America to the Supreme Court of the Territory of Hawaii, Greeting:

Because in the record and proceedings as also in the rendition of the judgment and decree which is in the said supreme court of the territory of Hawaii, before you or some of you, being the highest court of law or equity of said territory in which a decision could be had in the said suit, where was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States and the decision was against their validity; (or here state any other Federal question involved) a manifest error has happened to the great damage of ....., plaintiff in error herein as by their assignment of errors appears, we being willing that error, if any there be, should be duly corrected, and full justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same at Washington within thirty days from the date hereof in the said Supreme Court to be then and there heard, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, if any there be, what of right should be done according to the laws of the United States.

WITNESS the Honorable ..... Chief Justice of the said Supreme Court this ..... day of ..... A. D. 191...

.....
Clerk of the Supreme Court of
the Territory of Hawaii.

(Seal of the Supreme Court,
Title of Court and Cause.)

Allowed by

.....
Chief Justice of the Supreme Court
of the Territory of Hawaii.

[42] § 825 supra.

§ 2082. Certiorari Ninth Circuit to Supreme Court in Alaska Cases.

Pt. § 134, Judicial Code,[n] *36 Stat. at L. 1134, Comp. St. 1911, p. 195, 1912 Supp. F. S. A. v. 1, p. 197.* "Whenever such circuit court of appeals (for the ninth circuit) may desire the instruction of the Supreme Court of the United States upon any question or proposition of law which shall have arisen in such case, the court may certify such question or proposition to the Supreme Court, and thereupon the Supreme Court shall give its instruction upon the question or proposition certified to it, and its instruction shall be binding upon the circuit court of appeals."

The cases covered by this section are those in which appeals may be taken from district courts of Alaska to the circuit court of appeals for the ninth circuit, the decision of said circuit court of appeals being final except for the review by the Supreme Court as above provided. The language of the section is similar to that of § 239, Judicial Code, which provides for like procedure in all cases decided by the circuit courts of appeals of the various circuits, in which their judgments are otherwise final, and the effect of the section above quoted is to provide the same procedure in this class of appeals from the district courts of Alaska, as is provided by § 239, Judicial Code, in parallel appeals from district courts of the United States.

§ 2083. Procedure after Transcript Reaches Appellate Court.

Pt. Sup. Ct. Rule 8, and Cir. Ct. App. Rule 14. "No case will be heard until a complete record containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court, shall be filed."

This rule having been complied with the cause is docketed, heard, and decided in accordance with the rules of the particular appellate court to which the cause has been taken. It is not prac-

[n] For Annotation of this § 134, Judicial Code, see footnote [b], ante, our § 842.

ticable in a manual of this size to here set forth at length the provisions of all these rules. They are contained in the Appendix, and to them the practitioner must refer for information as to docketing, printing, and filing of brief, time for argument, and all the details relating to the conduct of the appeal before the appellate tribunal.

§ 2084. Dismissal of Appeal. Under the rules of the Supreme Court and the circuit courts of appeals, the appellee may secure the dismissal of an appeal upon any of the following grounds:

1. Transcript not properly filed or cause not docketed before return day named in citation.[43]

2. Record not printed in time.[44]

3. Nonappearance of counsel for appellant or failure to file brief.[45]

4. Appearance not entered when case calls.[46]

5. Requisite numbers of copies of brief not filed, or not filed in time.[47]

6. By stipulation filed with clerk in vacation.[48]

7. Neither party prepared to argue cause upon second call when called at two successive terms.[49]

8. Failure of deceased appellants, representatives to appear.[50]

In addition to the above-named grounds prescribed by the rules, the following, held by the courts sufficient to warrant dismissal, have been gathered together and set forth in Simkins "A Federal Equity Suit," (2d ed.) chapter 115:

9. Appellant may dismiss by leave of court.[51]

10. When it appears that further prosecution is collusive.[52]

[43] Sup. Ct. Rule 9, C. C. A. Rule 16. See Appendix.
[44] Sup. Ct. Rule 10, C. C. A. Rule 23. See Appendix.
[45] Sup. Ct. Rule 16, C. C. A. Rule 22. See Appendix.
[46] Sup. Ct. Rule 18, C. C. A. Rule 22. See Appendix.
[47] Sup. Ct. Rule 21, C. C. A. Rule 24. See Appendix.
[48] Sup. Ct. Rule 28, C. C. A. Rule 20. See Appendix.
[49] Sup. Ct. Rule 19. See Appendix.
[50] C. C. A. Rule 19. See Appendix.
[51] United States v. Griffith, 141 U. S. 212, 35 L. ed. 719, 11 Sup. Ct. Rep. 1005.
[52] Mills v. Green, 159 U. S. 654, 40 L. ed. 293, 16 Sup. Ct. Rep. 132; Benner v. Hayes, 26 C. C. A. 271, 80 Fed. 953; Weaver v. Kelley, 92 Fed. 421, 34 C. C. A. 423.

11. When there is no material issue.[53]

12. When the question is moot, or some abstract proposition.[54]

13. Where relief becomes impossible.[55]

14. An appeal will be dismissed if no citation is sued out, or sued out and not served, but the regular appearance of appellee waives it.[56]

15. An appeal will be dismissed when based on grounds affecting the jurisdiction of the court *a quo,* or the jurisdiction of the appellate court, as when the appeal was not sued out within the time limited.[57]

16. When decree joint, and appeal by one without notice to others.[58]

17. When no assignment of errors or brief.[59]

To procure the dismissal of an appeal, a written motion must be prepared and filed, and notice given in accordance with Supreme Court Rule 6, § 3, and Circuit Court of Appeals Rule 21, § 3.

The motion may be in the following form:

MOTION TO DISMISS.

(Title of Court and Cause.)

The appellee moves the Court to dismiss the appeal filed herein for the following reasons:

1. Because, etc., (setting forth the facts upon which the motion is based).

.....

Solicitor.

[53] Allen v. Georgia, 166 U. S. 140, 41 L. ed. 949, 17 Sup. Ct. Rep. 525.

[54] Kimball v. Kimball, 174 U. S. 158, 43 L. ed. 932, 19 Sup. Ct. Rep. 639; United States v. Evans, 213 U. S. 297, 53 L. ed. 803, 29 Sup. Ct. Rep. 507; Mills v. Green, 159 U. S. 653, 40 L. ed. 293, 16 Sup. Ct. Rep. 132.

[55] Mills v. Green, 159 U. S. 653, 40 L. ed. 293, 16 Sup. Ct. Rep. 132; Flour Inspectors v. Glover, 160 U. S. 170, 40 L. ed. 382, 16 Sup. Ct. Rep. 321; Katz v. San Antonio, 34 C. C. A. 10, 63 U. S. App. 452, 91 Fed. 567; Gamewell Fire Alarm Teleg. Co. v. Municipal Signal Co. 23 C. C. A. 250, 33 U. S. App. 714, 77 Fed. 492; Lockwood v. Wickes, 21 C. C. A. 257, 36 U. S. App. 321, 40 U. S. App. 136, 75 Fed. 118, as when statutes repealed. Flour Inspectors v. Glover, 160 U. S. 170, 40 L. ed. 382, 16 Sup. Ct. Rep. 321; Board of Flour Inspectors v. Glover, 161 U. S. 103, 40 L. ed. 632, 16 Sup. Ct. Rep. 492.

[56] Peace River Phosphate Co. v. Edwards, 17 C. C. A. 359, 30 U. S. App. 513, 70 Fed. 728; Freeman v. Clay, 1 C. C. A. 115, 2 U. S. App. 151, 48 Fed. 849.

[57] Gorman Wright Co. v. Wright, 67 C. C. A. 345, 134 Fed. 363–365; Great Southern Fire Proof Hotel Co. v. Jones, 177 U. S. 449–453, 44 L. ed. 842–844, 20 Sup. Ct. Rep. 690; Waxahachie v. Coler, 34 C. C. A. 349, 92 Fed. 284.

[58] Fitzpatrick v. Graham, 56 C. C. A. 95, 119 Fed. 353, and cases cited.

[59] Moline Trust & Sav. Bank v. Wiley, 79 C. C. A. 440, 149 Fed. 734; Fitch v. Richardson, 77 C. C. A. 422, 147 Fed. 196.

The appellant must receive notice of the motion, which may be served in the following form:

(Title of Court and Cause.)

To ..... appellant, and ..... his counsel:

Please take notice that the appellee will, on the ..... day of ....., 191.., or as soon thereafter as counsel can be heard, submit to the above entitled court at ....., his motion to dismiss the appeal now pending in this cause, a copy of which is attached to this notice.

.....

Solicitor.

§ 2085. Diminution of Record. If the transcript is incomplete or defective, the proper practice is a suggestion of diminution of the record, which is done by motion or petition in writing in the appellate court.

> *Supreme Court Rule 14, C. C. A. Rule 18.* "No certiorari for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for such certiorari must be made at the first term of the entry of the case; otherwise, the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay."

The petition may be, substantially, as follows:

PETITION FOR CERTIORARI FOR DIMINUTION OF RECORDS.[60]

(Title of Court and Cause.)

To the Honorable Justices of the Supreme Court of the United States:

The petition of ..... respectfully shows to this Honorable Court as follows (here set forth the failure of the clerk in the lower court to incorporate in the record those proceedings for the lack of which the diminution is suggested, or whatever the circumstances are, which are responsible for the diminution):

WHEREFORE your petitioner prays that a writ of certiorari may be issued out of and under the seal of this court, directed to the United States circuit court of appeals for the ..... circuit (or whatever court the appeal may have been taken from) commanding the said court to certify and send

[60] M. K. & T. Ry. Co. v. Dinsmore, 108 U. S. 30, 27 L. ed. 640, 2 Sup. Ct. Rep. 9.

to this court on a day certain to be therein designated, a full and complete transcript of all and every part of the record and proceedings of the said court in the said case therein entitled, ... v. ..... No. ...., remaining on file in the office of the clerk of the said court, and not embodied in the transcript on appeal in the said cause already filed in this court (or specify what parts of the record it is desired to have sent up).

.....

Petitioner.

It seems that the motion or petition must be verified, unless the facts therein stated are admitted.[61]

§ 2086. Mandate. Mandate is the command of the appellate court, directing the lower court in its disposition of a cause after its determination upon appeal or writ of error.

It is issued by the clerk of the appellate court, in accordance with the rules of that court,[62] and in form substantially as follows:

WRIT OF MANDATE TO DISTRICT COURT ON REVERSAL.

(Title of Court and Cause.)

United States of America, ss.

The President of the United States of America, to the Honorable Judges of the District court of the United States for the ..... district of .....: GREETING.

(Seal of the U. S. Supreme Court.)

Whereas, lately in the district court of the United States for the ..... district of ..... before you, or some of you, in a cause between ..... appellant and ..... appellee, wherein the decree of such district court entered in said cause on the ..... day of ..... 191.., is in the following words, viz:

"(Here set forth the decree verbatim.)"

As by the inspection of the transcript of the record which was brought into the Supreme Court of the United States by virtue of an appeal taken by ....., according to the act of Congress in such case made and provided, fully appears.

And whereas, on the ..... day of ..... 191.., the said cause came on to be heard before the said Supreme Court, on the said transcript of record, on appeal, and was argued by counsel.

[61] Chappell v. United States, 160 U. S. 499, 40 L. ed. 510, 16 Sup. Ct. Rep. 397.

[62] C. C. A. Rule 32, Supreme Ct. Rule 24, § 5, and Rule 39. See Appendix.

ON CONSIDERATION WHEREOF IT IS NOW HERE ORDERED, ADJUDGED AND DECREED BY THIS COURT that the decree of said district court in this cause be, and the same is hereby reversed, with costs to the original plaintiff, ..., against the defendant ..... (Here set forth the decree of the Supreme Court.)

And it is further ordered that this cause be, and the same is hereby, remanded to the said district court for further proceedings in conformity with the opinion of this court.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and the decree of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

WITNESS the Honorable ....., Chief Justice of the United States this ..... day of ..... A. D. 191...

.....

Clerk of the Supreme Court of the United States.

Upon receipt of the mandate by the lower court, nothing is left except for that court to carry it into execution.[63] If, in executing the directions contained in the writ of mandate, either party believes that the lower court has misconstrued those directions, his remedy is by appeal or mandamus.[64]

In such appeals the original judgment is not reviewable, the only question being as to the proper compliance with the directions contained in the writ of mandate.[65]

If the writ of mandate is clear, leaving nothing to the discretion of the lower court, and the action of that court does not conform to the mandate, the proper remedy is not appeal, but mandamus.[66]

§ 2087. Death of Party after Judgment, but before Appeal. Prior to the act of March 3, 1875, it was the practice, upon the death of a party after judgment had been rendered, and before the

[63] Durrant v. Storrow, 101 U. S. 555, 25 L. ed. 961; Great Northern R. Co. v. W. U. Tel. Co. 174 Fed. 321, 98 C. C. A. 193; In re S. F. & T. Co. 160 U. S. 247, 40 L. ed. 414, 16 Sup. Ct. Rep. 291.

[64] In re Blake, 175 U. S. 117, 44 L. ed. 94, 20 Sup. Ct. Rep. 42; Metcalf v. Watertown, 68 Fed. 861, 16 C. C. A. 37; James v. Central Trust Co. 108 Fed. 931, 47 C. C. A. 374.

[65] United States v. Camou, 184 U. S. 572, 46 L. ed. 694, 22 Sup. Ct. Rep. 505.

[66] In re Stanford Fork & Tool Co. 160 U. S. 247, 40 L. ed. 44, 16 Sup. Ct. Rep. 291; Mason v. Pewabic Min. Co. 153 U. S. 361, 38 L. ed. 745, 14 Sup. Ct. Rep. 847; In re Blake, 175 U. S. 117, 44 L. ed. 94, 20 Sup. Ct. Rep. 42.

time for taking an appeal had elapsed, to apply to the court below for an order reviving the suit in the name of the representative of the deceased.[67]

Section 9 of that act, however, made all formal revival proceedings unnecessary, the representative of the deceased being merely required to file a certified copy of his appointment. § 297, Judicial Code, repeals the act of Mar. 3, 1875, and furnishes no substitute for it. Consequently the old practice of formally applying for revivor in the name of the representative of the deceased is again necessary.

§ 2088. Death of Party while Appeal to Supreme Court Pending.

§§*1 and 2, Supreme Court Rule 15.* "1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that unless such representatives shall become parties within the first ten days of the ensuing term, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dismissed; and if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and on hearing have the judgment or decree reversed, if it be erroneous: *Provided, however,* That a copy of every such order shall be printed in some newspaper of general circulation within the state, territory, or district from which the case is brought, for three successive weeks, at least sixty days before the beginning of the term of the Supreme Court then next ensuing.

"2. When the death of a party is suggested, and the representatives of the deceased do not appear by the tenth day of the second term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate."

[67] McClane v. Boone, 6 Wall. 246, 18 L. ed. 836.

§ 2089. Supreme Court Procedure upon Death of Party Whose Personal Representative is without Jurisdiction of Trial Court.

§ *3, Supreme Court Rule 15.* "3. When either party to a suit in a circuit court of the United States shall desire to prosecute a writ of error or appeal to the Supreme Court of the United States from any final judgment or decree rendered in the circuit court, and at the time of suing out such writ of error or appeal the other party to the suit shall be dead and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit cannot be revived in that court, but shall have a proper representative in some state or territory of the United States, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the commencement of the term to which such writ of error or appeal is returnable, the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered said judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some state or territory of the United States, and stating therein the name and character of such representative and the state or territory in which such representative resides; and, upon such suggestion, he may, on motion, obtain an order that, unless such representative shall make himself a party within the first ten days of the ensuing term of the court, the plaintiff in error or appellant shall be entitled to open the record, and, on hearing, have the judgment or decree reversed if the same be erroneous: *Provided, however,* That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least sixty days before the beginning of the term of the Supreme Court then next ensuing: *And provided, also,* That in every such case, if the representative of the deceased party does not appear by the tenth day of the term next succeeding said suggestion, and the measures

above provided to compel the appearance of such representative have not been taken within time as above required by the opposite party, the case shall abate: *And provided, also,* That the said representative may at any time before or after said suggestion come in and be made a party to the suit, and thereupon the case shall proceed, and be heard and determined as in other cases."

§ 2090. Death of Party Pending Appeal to Circuit Court of Appeals.

Par. 1 and 2, C. C. A. Rule 19. "1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and, if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that, unless such representatives shall become parties within sixty days, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dismissed, and, if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and, on hearing, have the judgment or decree reversed, if it be erroneous: *Provided, however,* That a copy of every such order shall be personally served on said representatives at least thirty days before the expiration of such sixty days.

"2. When the death of a party is suggested, and the representatives of the deceased do not appear within ten days after the expiration of such sixty days, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate."

§ 2091. Procedure in Circuit Court of Appeals Where Representative of Deceased is Not within Trial Court's Jurisdiction.

Par. 3, C. C. A. Rule 19. "When either party to a suit in a district court of the United States shall desire to prosecute a writ of error or appeal to this court from any final judgment or decree rendered in the circuit or district court, and at the time of suing out such writ of error or appeal, the other party to the suit shall be dead and have no proper

representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit cannot be revived in that court, but shall have a proper representative in some state or territory of the United States, or in the District of Columbia, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the filing of the record in this court, the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered such judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some state or territory of the United States, or in the District of Columbia, and stating therein the name and character of such representative, and the state or territory or district in which such representative resides; and upon such suggestion he may on motion obtain an order that, unless such representative shall make himself a party within ninety days, the plaintiff in error or appellant shall be entitled to open the record, and on hearing have the judgment or decree reversed, if the same be erroneous: *Provided, however,* That a proper citation, reciting the substance of such order, shall be served upon such representative either personally or by being left at his residence, at least thirty days before the expiration of such ninety days: *Provided, also,* That in every such case, if the representative of the deceased party does not appear within ten days after the expiration of such ninety days, and the measures above provided to compel the appearance of such representative have not been taken within the time as above required, by the opposite party, the case shall abate; *And provided, also,* That the said representative may, at any time before or after said suggestion, come in and be made a party to the suit, and thereupon the suit shall proceed, and be heard and determined as in other cases."

CHAPTER 42.

CRIMINAL PROCEDURE.

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2160. Same—Rules and Mode of Proceeding may be Prescribed by Secretary of Treasury.
2161. Same—Penalty of Imprisonment or Removal from Office Excepted—Preservation of Informer's Right to Share of Fine, etc.
2162. Execution of Death Penalty.
2163. Death Penalty Abolished except in Certain Cases.

Sec.
2164. Life Imprisonment Substituted for Death Penalty when Lesser Penalty in Court's Discretion.
2165. No Corruption of Blood or Forfeiture of Estate.
2166. Whipping and pillory Abolished.
2167. Pardoning Power of the President.
2168. Parole of Prisoners.

§ 2100. Criminal Jurisdiction of the District Court.

Par. Second, § 24, Judicial Code,[a] *36 Stat. at L. 1091, Comp. St. 1911, p. 135, 1912 Supp. F. S. A. v. 1, p. 139.* "Of all crimes and offenses cognizable under authority of the United States."

Par. Ninth, § 24, Judicial Code, 36 Stat. at L. 1091, Comp. St. 1911, p. 136, 1912 Supp. F. S. A. v. 1, p. 139. "Of all suits and proceedings for the enforcement of penalties and forfeitures incurred under any law of the United States."

This jurisdiction is exclusive of the state courts under paragraphs first and second of § 256, Judicial Code, Comp. St. 1911, p. 234, 1912 Supp. F. S. A. v. 1, p. 238.

§ 2101. Places within Which the Criminal Laws of the United States Apply.

§ *311, Penal Code, 1909 Supp. F. S. A. p. 490.* "Except as otherwise expressly provided, the offenses defined in this chapter shall be punished as hereinafter provided, when committed within any territory or district or within or upon any place within the exclusive jurisdiction of the United States."

§ *272, Penal Code, 1909 Supp. F. S. A. p. 481.* "The crimes and offenses defined in this chapter shall be punished as herein prescribed:

"First. When committed upon the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state, or when committed within the admiralty and maritime jurisdiction of the United States and out of

[a] For Annotation of this § 24, Judicial Code, see footnote [b], ante, our § 194.

the jurisdiction of any particular state on board any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any state, territory, or district thereof.

"Second. When committed upon any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, namely: Lake Superior, Lake Michigan, Lake Huron, Lake Saint Clair, Lake Erie, Lake Ontario, or any of the waters connecting any of said lakes, or upon the River Saint Lawrence where the same constitutes the international boundary line.

"Third. When committed within or on any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the state in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

"Fourth. On any island, rock, or key containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States."

§ *310, Penal Code 1909, Supp. F. S. A. p. 490.* "The words 'vessel of the United States,' wherever they occur in this chapter, shall be construed to mean a vessel belonging in whole or in part to the United States, or any citizen thereof, or any corporation created by or under the laws of the United States, or of any state, territory, or district thereof."

§ 2102. Penal Laws Enforced in and Governing the Federal Courts.

§ *722, R. S., Comp. Stat. 1901, p. 582, 4 F. S. A. 529, Rose's Code,* § *29.* "The jurisdiction in civil and criminal matters conferred on the district and circuit courts by the provisions of this title, and of title 'Civil Rights,' and of title 'Crimes,' for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not

adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the Constitution and statutes of the state wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty."

§ 2103. Adoption of State Penal Laws for Reserved Federal Territory within State Boundaries.

§ *289, Penal Code, 1909 Supp F. S. A. 485.* "Whoever, within the territorial limits of any state, organized territory, or district, but within or upon any of the places now existing or hereafter reserved or acquired, described in section two hundred and seventy-two of this act, shall do or omit the doing of any act or thing which is not made penal by any law of Congress, but which, if committed or omitted within the jurisdiction of the state, territory, or district in which such place is situated, by the laws thereof now in force, would be penal, shall be deemed guilty of a like offense and be subject to a like punishment; and every such state, territorial, or district law shall, for the purpose of this section, continue in force, notwithstanding any subsequent repeal or amendment thereof by any such state, territory, or district."

§ 2104. State and Federal Jurisdictions of Offenses. Except within reserved territory as set out in the preceding section under § 289, Penal Code, the Federal courts do not execute the penal laws of a state; nor have they any common-law criminal jurisdiction.[1]

In criminal cases the law administered is entirely Federal, provided and prescribed by Congress under the limitations of the Constitution.[2] The statute adopting state laws as rules of decision

[1] United States v. Britton, 108 U. S. 199, 27 L. ed. 698, 2 Sup. Ct. Rep. 531; Benson v. McMahon, 127 U. S. 457, 32 L. ed. 234, 8 Sup. Ct. Rep. 1240; Jones v. United States, 137 U. S. 202, 34 L. ed. 691, 11 Sup. Ct. Rep. 80; United States v. Eaton, 144 U. S. 677, 36 L. ed. 591, 12 Sup. Ct. Rep. 764; United States v. Wilson, 3 Blatchf. (N. S.) 438, Fed. Cas. No. 16,731; United States v. Plummer, 3 Cliff. 28, Fed. Cas. No. 16,056.

[2] United States v. Reid, 12 How. 363, 13 L. ed. 1023.

does not apply to criminal prosecutions in the Federal courts.[3] The laws of evidence in Federal criminal trials are those that existed in the states when the judiciary act was adopted in 1789 and as modified by subsequent acts of Congress.[4]

The same act may be an offense against both state and Federal laws.[5] But this does not prevent the state court taking jurisdiction of and punishing the act done as an offense against the state; nor a territory from punishing an act also punishable under Federal law.[6] So long as the act done is within the punishing power of both state and nation, the fact that the state courts may not take jurisdiction of the crime as denounced by the Federal law does not prevent their punishing it under the state law.[7] In a sense there are two distinct crimes involved in such cases;[8] and an acquittal or conviction of one does not bar trial for the other on the ground of former jeopardy.[9]

§ 2105. Jurisdiction of State Courts under State Laws Not Affected.

> § *326, Penal Code, 1909 Supp. F. S. A. 493.* "Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several states under the laws thereof."

The making of certain offenses against the laws of the United States punishable does not prevent the states from taking hold of any offenses which may be involved that are contrary to state laws, and not cognizable under the United States laws.[10]

[3] Ibid.

[4] Ibid; Logan v. United States, 144 U. S. 263, 36 L. ed. 429, 12 Sup. Ct. Rep. 617; United States v. Hall, 53 Fed. 353.

[5] United States v. Marigold, 9 How. 569, 13 L. ed. 261; Fox v. Ohio, 5 How. 433, 12 L. ed. 223; Moore v. Illinois, 14 How. 19, 14 L. ed. 306; Ex parte Siebold, 100 U. S. 390, 25 L. ed. 724; United States v. Wells, 28 Fed. Cas. No. 16,665; State v. Kirkpatrick, 32 Ark. 121; People v. Welch, 141 N. Y. 266, 38 Am. St. Rep. 793, 36 N. E. 328, 24 L.R.A. 117.

[6] Cross v. North Carolina, 132 U. S. 139, 33 L. ed. 290, 10 Sup. Ct. Rep. 49; Crossley v. California, 168 U. S. 641, 42 L. ed. 610, 18 Sup. Ct. Rep. 242.

[7] Pettibone v. United States, 148 U. S. 197, 37 L. ed. 419, 13 Sup. Ct. Rep. 542.

[8] United States v. Barnhart, 22 Fed. 285, 10 Sawy. 491; State v. Oleson, 26 Minn. 507, 5 N. W. 959.

[9] State v. Sly, 4 Or. 279; United States v. Amy, 14 Md. 149, note, 4 Quart. L. J. 163, Fed. Cas. No. 14,445; Carter v. McClaughry, 183 U. S. 365, 46 L. ed. 236, 22 Sup. Ct. Rep. 181.

[10] Ex parte Houghton, 8 Fed. 897.

§ 2 Act February 13, 1913, ch. 50, 37 Stat. at L. 670. (Act punishing larceny and asportation of interstate shipments.) § 2. That nothing in this act shall be held to take away or impair the jurisdiction of the courts of the several states under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any state shall be a bar to any prosecution hereunder for the same act or acts.

§ 2106. Venue of Criminal and Penal Prosecutions. This subject is treated in §§ 174, 175, 177, and 178, chapter 5, supra, and is only summarized here.

Capital offenses in the county where the offense is committed, where that can be done without great inconvenience (§ 40, Judicial Code).

Offenses on the high seas or elsewhere out of the jurisdiction of a particular state or district, in the district where the offender is found or first brought (§ 41, Judicial Code).

Larceny, etc., of interstate shipments "in any district wherein the crime shall have been committed." Asporting such goods is a separate offense and "prosecutions therefor may be instituted in any district into which such freight, express, baggage, goods, or chattels shall have been removed or into which they shall have been brought by such offender. (Act February 13, 1913, ch. 50, 37 Stat. at L. 670.)

Offenses committed in two districts, in either district (§ 42, Judicial Code).

Sale of arms and intoxicants on the Pacific islands deemed committed on high seas or vessel belonging to United States (§ 309, Penal Code). Vessel is defined in § 310, Penal Code, quoted in the last part, § 2101 above.

Pecuniary penalties and forfeitures where they accrue or the offender is found (§ 43, Judicial Code).

Seizures made on high seas for forfeitures, where the property is seized (§ 45, Judicial Code).

Condemnation of insurrectionary property where the same is seized or taken and proceedings first instituted (§ 46, Judicial Code).

Seizures on embargo or insurrection in any district into which

the property so seized may be taken and proceedings instituted (§ 47, Judicial Code).

§ 2107. Statutes of Limitations—Criminal Cases. Statutes of Limitations is the general subject of chapter 13, supra. Limitations as to capital offenses are set out in § 391, supra; offenses not capital §§ 392–3; under the customs revenue laws, § 394; under internal revenue laws, § 395; seduction of female passenger, § 396; violations of the naturalization laws, § 397.

§ 2108. How Offenses are Prosecuted.

Capital offenses or otherwise infamous crimes.

Pt. 5th Amend. U. S. Const. "No person shall be held to answer for capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger. . . ."

Offenses not infamous.

§ 1022, R. S., Comp. Stat. 1901, p. 720, 1 F. S. A. 802, Rose's Code, § 1574. "All crimes and offenses committed against the provisions of chapter seven, title "Crimes," which are not infamous, may be prosecuted either by indictment or by information filed by a district attorney."

§ 2109. Qualifications and Exemptions of Jurors Same as under State Laws.

§ 275, Judicial Code,[c] *36 Stat. at L. 1164, Comp. St. 1911, p. 239, 1912 Supp. F. S. A. v. 1, p. 245.* "Jurors to serve in the courts of the United States, in each state respectively, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such state may have, and be entitled to at the time when such jurors for service in the courts of the United States are summoned."

§ 2110. Jurors Not Disqualified on Account of Race, Color, or Previous Condition of Servitude.

§ 278, Judicial Code,[d] *36 Stat. at L. 1165, Comp. St.*

[c] For Annotation of this § 275, Judicial Code, see footnote [a], ante, our § 734.

[d] For Annotation of this § 278, Judicial Code, see footnote, [b], ante, our § 735.

1911, p. 239, 1912 Supp. F. S. A. v. 1, p. 246. "No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States on account of race, color, or previous condition of servitude."

Punishment of officers or other persons selecting jurors excluding citizens on above grounds fine not more than five thousand dollars. See § 736, supra.

§ 2111. Jurors Drawn from District under Court's Direction.

§ *277, Judicial Code,*[e] *36 Stat. at L. 1164, Comp. St. 1911, p. 239, 1912 Supp. F. S. A. v. 1, p. 245.* "Jurors shall be returned from such parts of the district, from time to time, as the court shall direct, so as to be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly burden the citizens of any part of the district with such service."

§ 2112. Impaneling Jurors.

§ *276, Judicial Code,*[f] *36 Stat. at L. 1164, Comp. St. 1911, p. 239, 1912 Supp. F. S. A. v. 1, p. 245.* "All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk may belong, the clerk and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein."

[e] For Annotation of this § 277, Judicial Code, see footnote [d], ante, our § 738.

[f] For Annotation of this § 276, Judicial Code, see footnote [e], ante, our § 739.

§ 2113. Venire—Issuance and Return.

§ *279, Judicial Code,*[g] *36 Stat. at L. 1165, Comp. St. 1911, p. 240, 1912 Supp. F. S. A. v. 1, p. 246.* "Writs of venire facias, when directed by the court, shall issue from the clerk's office, and shall be served and returned by the marshal in person, or by his deputy; or, in case the marshal or his deputy is not an indifferent person, or is interested in the event of the cause, by such fit person as may be specially appointed for that purpose by the court, who shall administer to him an oath that he will truly and impartially serve and return the writ. Any person named in such writ who resides elsewhere than at the place at which the court is held, shall be served by the marshal mailing a copy thereof to such person, commanding him to attend as a juror at a time and place designated therein, which copy shall be registered and deposited in the postoffice addressed to such person at his usual postoffice address. And the receipt of the person so addressed for such registered copy shall be regarded as personal service of such writ upon such person, and no mileage shall be allowed for the service of such person. The postage and registry fee shall be paid by the marshal and allowed him in the settlement of his accounts."

§ 2114. Special Juries.

§ *281, Judicial Code,*[h] *36 Stat. at L. 1165, Comp. St. 1911, p. 240, 1912 Supp. F. S. A. v. 1, p. 246.* "When special juries are ordered in any district court, they shall be returned by the marshal in the same manner and form as is required in such cases by the laws of the several states."

§ 2115. When Grand Jury Summoned.

§ *284, Judicial Code,*[i] *36 Stat. at L. 1165, Comp. St. 1911, p. 241, 1912 Supp. F. S. A. v. 1, p. 247.* "No grand jury shall be summoned to attend any district court unless the judge thereof, in his own discretion or upon a notification by the district attorney that such jury will be needed,

[g] For Annotation of this § 279, Judicial Code, see footnote [f], ante, our § 740.

[h] For Annotation of this § 281, Judicial Code, see footnote [h], ante, our § 742.

[i] Re-enacting § 810, R. S., Rose's Code, § 1711, Foster's Fed. Prac. (4th ed.) p. 1402, Comp. St. 1901, p. 627, 4 F. S. A. 744, as amended by Act of March 28, 1910, 36 Stat. at L. 267, which are repealed by § 297, Judicial Code. In general, Powers v. United States, 223 U. S. 303, 56 L. ed. 448, 32 Sup. Ct. Rep. 281.

orders a venire to issue therefor. If the United States attorney for any district which has a city or borough containing at least three hundred thousand inhabitants shall certify in writing to the district judge, or the senior district judge of the district, that the exigencies of the public service require it, the judge may, in his discretion, also order a venire to issue for a second grand jury. And said court may in term order a grand jury to be summoned at such time, and to serve such time as it may direct, whenever, in its judgment, it may be proper to do so. But nothing herein shall operate to extend beyond the time permitted by law the imprisonment before indictment found of a person accused of a crime or offense, or the time during which a person so accused may be held under recognizance before indictment found."

§ 2116. Grand Jury to Have Not Less Than 16 Nor More Than 23 Members—Talesmen.

§ 282, Judicial Code,[j] *36 Stat. at L. 1165, Comp. St. 1911, p. 240, 1912 Supp. F. S. A. v. 1, p. 246.* "Every grand jury impaneled before any district court shall consist of not less than sixteen nor more than twenty-three persons. If of the persons summoned less than sixteen attend, they shall be placed on the grand jury, and the court shall order the marshal to summon, either immediately or for a day fixed, from the body of the district, and not from the bystanders, a sufficient number of persons to complete the grand jury. And whenever a challenge to a grand juror is allowed, and there are not in attendance other jurors sufficient to complete the grand jury, the court shall make a like order to the marshal to summon a sufficient number of persons for that purpose."

§ 2117. Foreman of Grand Jury.

§ 283, Judicial Code,[k] *36 Stat. at L. 1165, Comp. St. 1911, p. 241, 1912 Supp. F. S. A. v. 1, p. 247.* "From the persons summoned and accepted as grand jurors, the court

[j] Re-enacting § 808, R. S., Rose's Code, § 1709, Comp. St. 1901, p. 626. 4 F. S. A. 743, which section is repealed by § 297, Judicial Code. In general, United States v. Merchant's & Miners' Transp. Co. et al. 187 Fed. 363.

[k] Re-enacting § 809, R. S., Rose's Code, § 1710, Foster's Fed. Prac. (4th ed.) pp. 1402, 1409, Comp. St. 1901, p. 627, 4 F. S. A. 744, which section is repealed by § 297, Judicial Code. In general, Burchett v. United States, 194 Fed. 821, 114 C. C. A. 525.

shall appoint the foreman, who shall have power to administer oaths and affirmations to witnesses appearing before the grand jury."

§ 2118. Discharge of Grand Juries.

§ *285, Judicial Code,*[1] *36 Stat. at L. 1166, Comp. St. 1911, p. 241, 1912 Supp. F. S. A. v. 1, p. 247.* "The district courts, the district courts of the territories, and the supreme court of the District of Columbia may discharge their grand juries whenever they deem a continuance of the sessions of such juries unnecessary."

§ 2119. Grand Jury Indictments by at Least 12 Jurors.

§ *1021, R. S., Comp. Stat. 1901, p. 719, 2 F. S. A. 336, Rose's Code, § 1752.* "No indictment shall be found, nor shall any presentment be made, without the concurrence of at least twelve grand jurors."

§ 2120. Form of Indictment for Perjury.

§ *5396, R. S., Comp. Stat. 1901, p. 3655, 5 F. S. A. 705.* "In every presentment or indictment prosecuted against any person for perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and by which court, and before whom the oath was taken, averring such court or person to have competent authority to administer the same, together with the proper averment to falsify the matter wherein the perjury is assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding, either in law or equity, or any affidavit, deposition, or certificate, other than as hereinbefore stated, and without setting forth the commission or authority of the court or person before whom the perjury was committed."

§ 2121. Form of Indictment for Subornation of Perjury.

§ *5397, R. S., Comp. Stat. 1901, p. 3655, 5 F. S. A. 707, Rose's Code, § 1576.* "In every presentment or indictment for subornation of perjury it shall be sufficient to set forth

[1] Re-enacting § 811, R. S., Rose's Code, § 1712, Foster's Fed. Prac. (4th ed.) p. 1403, Comp. St. 1901, p. 627, 4 F. S. A. 744, which is repealed by § 297, Judicial Code. Discharge, Jones et al. v. United States, 162 Fed. 417, 89 C. C. A. 303.

the substance of the offense charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding, either in law or equity, or any affidavit, deposition, or certificate, and without setting forth the commission or authority of the court or person before whom the perjury was committed, or was agreed or promised to be committed."

§ 2122. Form of Indictment before a Navy Court-Martial.

§ 1023, R. S., Comp. Stat. 1901, p. 720, 5 F. S. A. 708, Rose's Code, § 1577. "In prosecutions for perjury committed on examination before a naval general court-martial, or for the subornation thereof, it shall be sufficient to set forth the offense charged on the defendant, without setting forth the authority by which the court was held, or the particular matters brought before, or intended to be brought before, said court."

§ 2123. Joining Charges against a Person in One Indictment—Consolidation of Indictments.

§ 1024, R. S., Comp. Stat. 1901, p. 720, 2 F. S. A. 337, Rose's Code, § 1578. "When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court may order them to be consolidated."

§ 2124. Defects of Form in Indictment—Immaterial unless Prejudicial.

§ 1025, R. S., Comp. Stat. 1901, p. 720, 2 F. S. A. 340, Rose's Code, § 1579. "No indictment found and presented by a grand jury in any district or circuit or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant."

§ 2125. Judgment Respondeat Ouster on Demurrer to an Indictment.

§ *1026, R. S., Comp. Stat. 1901, p. 720, 2 F. S. A. 343, Rose's Code,* § *1580.* "In every case in any court of the United States, where a demurrer is interposed to an indictment, or to any count or counts thereof, or to any information, and the demurrer is overruled, the judgment shall be *respondeat ouster;* and thereupon a trial may be ordered at the same term, or a continuance may be ordered, as justice may require."

§ 2126. Arrest—Imprisonment—Bail—Removal for Trial —Offenders against the United States.

§ *1014, R. S., Comp. Stat. 1901, p. 716, 2 F. S. A. 321, Rose's Code,* § *1537.* "For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any state where he may be found, and agreeably to the usual mode of process against offenders in such state, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had."

§ 2127. Marshal Making Arrest to Take Prisoner to Nearest Judicial Officer and Return before Such Officer the Warrant with Certified Copy of Complaint Attached.

Act Aug. 18, 1894, ch. 301, Comp. Stat. 1901, p. 717, 2 F. S. A. 334, Rose's Code, § *1538.* "*Provided,* That it shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense,

to take the defendant before the nearest circuit court commissioner or the nearest judicial officer having jurisdiction under existing laws for a rehearing, commitment, or taking bail for trial, and the officer or magistrate issuing the warrant shall attach thereto a certified copy of the complaint, and upon the arrest of the accused, the return of the warrant, with a copy of the complaint attached, shall confer jurisdiction upon such officer as fully as if the complaint had originally been made before him, and no mileage shall be allowed any officer violating the provisions hereof."

§ 2128. Officers Authorized to Hold to Security of the Peace and for Good Behavior.

§ *270, Judicial Code,*[m] *36 Stat. at L. 1163, Comp. St. 1911, p. 237, 1912 Supp. F. S. A. v. 1, p. 243.* "The judges of the Supreme Court and of the circuit court of appeals and district courts, United States commissioners, and the judges and other magistrates of the several states who are or may be authorized by law to make arrests for offenses against the United States, shall have the like authority to hold to security of the peace and for good behavior, in cases arising under the Constitution and laws of the United States, as may be lawfully exercised by any judge or justice of the peace of the respective states, in cases cognizable before them."

§ 2129. Bail Admitted in Cases Not Capital.

§ *1015, R. S., Comp. Stat. 1901, p. 718, 1 F. S. A. 521, Rose's Code, § 1514.* "Bail shall be admitted upon all arrests in criminal cases where the offense is not punishable by death; and in such cases it may be taken by any of the persons authorized by the preceding section[mm] to arrest and imprison offenders."

§ 2130. Bail Admitted in Capital Cases only by Court or Judge.

§ *1016, R. S., Comp. Stat. 1901, p. 718, 1 F. S. A. 522, Rose's Code, § 1545.* "Bail may be admitted upon all arrests in criminal cases where the punishment may be death; but

[m] Drawn from § 727, R. S., Rose's Code, § 1593, Comp. St. 1901, p. 485, 4 F. S. A. 519, which section is repealed by § 297, Judicial Code. In general, Rice v. Ames, 180 U. S. 371, 45 L. ed. 577, 21 Sup. Ct. Rep. 406.

[mm] § 1014 R. S. quoted in § 2126 above.

in such cases it shall be taken only by the Supreme Court or a circuit court, or by a justice of the Supreme Court, a circuit judge, or a judge of a district court, who shall exercise their discretion therein, having regard to the nature and circumstance of the offense, and of the evidence, and to the usages of law."

§ 2131. Bail in Criminal Cases Removed by Writ of Error from State Court.

§ *1017, R. S., Comp. Stat. 1901, p. 718, 1 F. S. A. 522, Rose's Code, § 1546.* "When a writ of error is issued for the revision of the judgment of a state court, in any criminal proceeding where is drawn in question the validity of a statute of, or an authority exercised under, the United States, or where any title, right, privilege, or immunity is claimed under the Constitution, or any statute of, or commission held or authority exercised under, the United States the defendant, if charged with an offense that is bailable by the laws of such state, shall not be released from custody until a final judgment upon such writ, or until a bond, with sufficient sureties, in a reasonable sum, as ordered and approved by the state court, is given; and if the offense is not so bailable, until a final judgment upon the writ of error."

§ 2132. Bail—Surrender of.

§ *1018, R. S., Comp. Stat. 1901, p. 719, 1 F. S. A. 522, Rose's Code, § 1549.* "Any party charged with a criminal offense and admitted to bail may, in vacation, be arrested by his bail, and delivered to the marshal or his deputy, before any judge or other officer having power to commit for such offense; and at the request of such bail, the judge or other officer shall recommit the party so arrested to the custody of the marshal, and indorse on the recognizance, or certified copy thereof, the discharge and exoneretur of such bail; and the party so committed shall therefrom be held in custody until discharged by due course of law."

§ 2133. New Bail as Better Security.

§ *1019, R. S., Comp. Stat. 1901, p. 719, 1 F. S. A. 523, Rose's Code, § 1550.* "When proof is made to any judge of the United States, or other magistrate having authority to commit on criminal charges as aforesaid, that a person

previously admitted to bail on any such charge is about to abscond, and that his bail is insufficient, the judge or magistrate shall require such person to give better security, or, for default thereof, cause him to be committed to prison; and an order for his arrest may be indorsed on the former commitment, or a new warrant therefor may be issued by such judge or magistrate, setting forth the cause thereof."

§ 2134. Recognizance—Remittance of—Forfeiture of.

§ 1020, R. S., Comp. Stat. 1901, p. 719, 1 F. S. A. 523, Rose's Code, § 1551. "When any recognizance in a criminal cause, taken for, or in, or returnable to, any court of the United States, is forfeited by a breach of the condition thereof, such court may, in its discretion, remit the whole or a part of the penalty, whenever it appears to the court that there has been no wilful default of the party, and that a trial can, notwithstanding, be had in the cause, and that public justice does not otherwise require the same penalty to be enforced."

§ 2135. Copy of Writ—Jailer's Authority and Original Returned with Officer's Return.

§ 1028, R. S., 10 Stat. at L. 162, 3, Comp. Stat. 1901, p. 721, 2 F. S. A. 335, Rose's Code, § 1582. "Whenever a prisoner is committed to a sheriff or jailer by virtue of a writ, warrant, or mittimus, a copy thereof shall be delivered to such sheriff or jailer, as his authority to hold the prisoner, and the original writ, warrant, or mittimus shall be returned to the proper court or officer, with the officer's return thereon."

§ 2136. Writ for Removal of Prisoner from One District to Another.

§ 1029, R. S., 10 Stat. at L. 162, 3, Comp. Stat. 1901, p. 721, 2 F. S. A. 335, Rose's Code, § 1583. "Only one writ or warrant is necessary to remove a prisoner from one district to another. One copy thereof may be delivered to the sheriff or jailer from whose custody the prisoner is taken, and another to the sheriff or jailer to whose custody he is committed, and the original writ, with the marshal's return thereon, shall be returned to the clerk of the district to which he is removed."

§ 2137. One Writ Sufficient Where Several Indictments against Same Person.

§ *1027, R. S., Comp. Stat. 1901, p. 721, 2 F. S. A. 334, Rose's Code, § 1581.* "When two or more charges are made, or two or more indictments are found against any person, only one writ or warrant shall be necessary to commit him for trial; and it shall be sufficient to state in the writ the name or general character of the offenses, or to refer to them only in very general terms."

§ 2138. No Writ Necessary to Bring into Court Person in Custody.

§ *1030, R. S., 10 Stat. at L. 169, Comp. Stat. 1901, p. 721, 2 F. S. A. 335, Rose's Code, § 1584.* "No writ is necessary to bring into court any prisoner or person in custody, or for remanding him from the court into custody; but the same shall be done on the order of the court or district attorney, for which no fees shall be charged by the clerk or marshal."

§ 2139. Duty of District Attorney to Prosecute.

Pt. § 771, R. S., Comp. Stat. 1901, p. 601, 4 F. S. A. 155, Rose's Code, § 524. "It shall be the duty of every district attorney to prosecute, in his district, all delinquents for crimes and offenses cognizable under the authority of the United States. . . ."

§ 2140. Standing Mute—Plea Not Guilty.

§ *1032, R. S., Comp. Stat. 1901, p. 722, 2 F. S. A. 343, Rose's Code, § 1585.* "When any person indicted for any offense against the United States, whether capital or otherwise, upon his arraignment stands mute, or refuses to plead or answer thereto, it shall be the duty of the court to enter the plea of not guilty on his behalf, in the same manner as if he had pleaded not guilty thereto. And when the party pleads not guilty, or such plea is entered as aforesaid, the cause shall be deemed at issue, and shall, without further form or ceremony, be tried by a jury."

§ 2141. Indicted of Treason or Capital Offense Entitled to Copy of Indictment and List of Jurors and Witnesses.

§ *1033, R. S., 1 Stat. at L. 118, Comp. Stat. 1901, p. 722, 2 F. S. A. 344, Rose's Code, § 1586.* "When any person is

indicted of treason, a copy of the indictment and a list of the jury, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each juror and witness, shall be delivered to him at least three days before he is tried for the same. When any person is indicted of any capital offense, such copy of the indictment and list of the jurors and witnesses shall be delivered to him at least two entire days before the trial."

This provision is not directory only, but mandatory to the government; and its purpose is to inform the defendant of the testimony he will have to meet and enable him to prepare his defense. Being enacted for his benefit, he may doubtless waive it, if he pleases; but he has a right to insist upon it, and if he seasonably does so, the trial cannot lawfully proceed until the requirement has been complied with.[1] There would appear to be a negative pregnant here, and it has accordingly been held that in cases not capital the prisoner is not entitled to a copy of the indictment at government expense.[2] Nor is he entitled to a list of witnesses and jurors.[3] But in cases not capital, where there has been no preliminary examination, it is within the discretion of the court to order a list of the witnesses sworn before the grand jury to be furnished the accused.[4] The arraignment is to be regarded as the commencement of the trial, and the statutory time in which the copy of the indictment and a list of the jury are to be delivered to him must be exclusive of the day of delivery and the day of arraignment.[5]

§ 2142. Persons Indicted for Capital Crimes Entitled to Counsel and to Compel Witnesses.

§ 1034, R. S., 1 Stat. at L. 118, Comp. Stat. 1901, p. 722, 2 F. S. A. 344, Rose's Code, § 1586. "Every person who is indicted of treason or other capital crime, shall be allowed

[1] Logan v. United States, 144 U. S. 263, 36 L. ed. 429, 12 Sup. Ct. Rep. 617; Hickory v. United States, 151 U. S. 303, 38 L. ed. 170, 14 Sup. Ct. Rep. 334; United States v. Cornell, 2 Mason, 91, Fed. Cas. No. 14,868.

[2] United States v. Van Duzee, 140 U. S. 169, 35 L. ed. 399, 11 Sup. Ct. Rep. 758; Shelp v. United States, 81 Fed. 694, 26 C. C. A. 570.

[3] United States v. Van Duzee, 140 U. S. 169, 35 L. ed. 399, 11 Sup. Ct. Rep. 758.

[4] United States v. Southmayd, 6 Biss. 321, Fed. Cas. No. 16,361.

[5] United States v. Dow, Taney, 34, Fed. Cas. No. 14,990.

to make his full defense by counsel learned in the law; and the court before which he is tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two as he may desire, and they shall have free access to him at all seasonable hours. He shall be allowed, in his defense, to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial, as is usually granted to compel witnesses to appear on behalf of the prosecution."

Pt. 6th Amend. U. S. Const. "In all criminal prosecutions the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense."

§ 2143. Accused Has Right to Trial by Jury.

Pt. 6th Amend. U. S. Const. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, . . ."

The provisions relating to qualifications and exemptions, etc., of petit jurors are about the same as for grand jurors set out in the preceding sections; but in prosecutions for bigamy or polygamy there are special grounds of challenge set out in the following section. The subject of petit juries is treated in §§ 733–743 inclusive, supra. Special provisions as to challenges in criminal cases are in the following sections.

§ 2144. Peremptory Challenges—Criminal Cases.

§ *287, Judicial Code,*[n] *36 Stat. at L. 1166, Comp. St. 1911, p. 241, 1912 Supp. F. S. A. v. 1, p. 248.* "When the offense charged is treason or a capital offense, the defendant shall be entitled to twenty and the United States to six peremptory challenges. On the trial of any other felony, the defendant shall be entitled to ten and the United States

[n] For Annotation of this § 287, Judicial Code, see footnote [1], ante, our § 743.

to six peremptory challenges; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges under this section. All challenges, whether to the array or panel, or to individual jurors for cause or favor, shall be tried by the court without the aid of triers."

§ 2145. Excessive Peremptory Challenges in Capital Cases Disregarded.

§ *1031, R. S., Comp. Stat. 1901, p. 721, 4 F. S. A. 747, Rose's Code, § 1716.* "If, in the trial of a capital offense, the party indicted peremptorily challenges jurors above the number allowed him by law, such excess of challenges shall be disallowed by the court, and the cause shall proceed for trial in the same manner as if they had not been made."

§ 2146. Challenges in Prosecutions for Bigamy or Polygamy.

§ *288, Judicial Code,* 36 Stat. at L. 1166, Comp. St. 1911, p. 242, 1912 Supp. F. S. A. v. 1, p. 248.* "In any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, it shall be sufficient cause of challenge to any person drawn or summoned as a juryman or talesman—

"First, that he is or has been living in the practice of bigamy, polygamy, or unlawful cohabitation with more than one woman, or that he is or has been guilty of an offense punishable either by sections one or three of an Act entitled, "An Act to Amend Section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in Reference to Bigamy, and for Other Purposes," approved March twenty-second, eighteen hundred and eighty-two, or by section fifty-three hundred and fifty-two of the Revised Statutes of the United States, or the act of July first, eighteen hundred and sixty-two, entitled, "An Act to Punish and Prevent the Practice of Polygamy in the Territories of the United States

* Re-enacting § 5 of Act of March 22, 1882, ch. 47, Rose's Code, § 1718, Foster's Fed. Prac. (4th ed.) p. 1398, 22 Stat. at L. 31, Comp. St. 1901, p. 3634, 4 F. S. A. 706. In general, France v. Connor, 161 U. S. 65, 40 L. ed. 619, 16 Sup. Ct. Rep. 497.

and Other Places, and Disapproving and Annulling Certain Acts of the Legislative Assembly of the Territory of Utah;" or

"Second, that he believes it right for a man to have more than one living and undivorced wife at the same time, or to live in the practice of cohabiting with more than one woman.

"Any person appearing or offered as a juror or talesman, and challenged on either of the foregoing grounds, may be questioned on his oath as to the existence of any such cause of challenge; and other evidence may be introduced bearing upon the question raised by such challenge; and this question shall be tried by the court.

"But as to the first ground of challenge before mentioned, the person challenged shall not be bound to answer if he shall say upon his oath that he declines on the ground that his answer may tend to criminate himself; and if he shall answer as to said first ground, his answer shall not be given in evidence in any criminal prosecution against him for any offense above named; but if he declines to answer on any ground, he shall be rejected as incompetent."

§ 2147. Trial of Criminal Cases. Provisions as to evidence are in chapter 14, and as to witnesses in chapter 15.

The Federal courts follow their own rules and decisions respecting the trial of criminal cases and matters incidental thereto.

The rules of the district court in the various districts should be consulted.

§ 2148. Verdict for Less Offense than Charged.

§ 1035, R. S., 7 Stat. at L. 198, Comp. Stat. 1901, p. 723, 2 F. S. A. 352, Rose's Code, § 1588. "In all criminal causes the defendant may be found guilty of any offense the commission of which is necessarily included in that with which he is charged in the indictment, or may be found guilty of an attempt to commit the offense so charged: *Provided,* That such attempt be itself a separate offense."

This section does not authorize a jury to find the defendant guilty of a less offense than the one charged, unless the evidence justified them in so doing. Congress did not intend to invest

juries in criminal cases with power arbitrarily to disregard the evidence and the principles of law applicable to the case on trial.[1]

§ 2149. Verdict against One or More Several Joint Defendants.

§ *1036, R. S., Comp. Stat. 1901, p. 723, 2 F. S. A. 353, Rose's Code, § 1589.* "On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly; and the cause as to the other defendants may be tried by another jury."

§ 2150. Qualified Verdict in Cases of Murder in First Degree or Rape.

§ *330, Penal Code, 1909 Supp. F. S. A. 494.* "In all cases where the accused is found guilty of the crime of murder in the first degree, or rape, the jury may qualify their verdict by adding thereto 'without capital punishment;' and whenever the jury shall return a verdict qualified as aforesaid the person convicted shall be sentenced to imprisonment at hard labor for life."

§ 2151. Execution Postponed in Capital Case Carried to Appellate Court.

§ *1040, R. S., 15 Stat. at L. 338, Comp. Stat. 1901, p. 724, 2 F. S. A. 354, Rose's Code, § 2017.* "Whenever a judgment of death is rendered in any court of the United States, and the case is carried to the Supreme Court in pursuance of law, the court rendering such judgment shall, by its order, postpone the execution thereof from time to time and from term to term, until the mandate of the Supreme Court in the case is received and entered upon the records of such lower court. In case of affirmance by the Supreme Court, the court rendering the original judgment shall appoint a day for the execution thereof; and in case of reversal, such further proceedings shall be had in the lower court as the Supreme Court may direct."

The provision above quoted does not seem to have been expressly repealed. Section 238, Judicial Code, providing for appeals and

[1] Sparf v. United States, 156 U. S. 51, 39 L. ed. 343, 15 Sup. Ct. Rep. 273.

writs of error from the district courts to the Supreme Court, does not contain the clause, contained in the former law, giving appellate review in criminal cases. Section 128, Judicial Code, now vests such criminal appellate jurisdiction in the circuit court of appeals. If the provision in § 1040, R. S., above quoted does not apply to the circuit court of appeals by reason of the transfer of the Supreme Court's criminal appellate jurisdiction to it, nevertheless the same result, the postponing of the execution, would be accomplished by the supersedeas.

§ 2152. Judgments for Fines—How Collected.

§ 1041, R. S., Comp. Stat. 1901, p. 724, 3 F. S. A. 98, Rose's Code, § 1606. "In all criminal or penal causes in which judgment or sentence has been or shall be rendered, imposing the payment of a fine or penalty, whether alone or with any other kind of punishment, the said judgment, so far as the fine or penalty is concerned, may be enforced by execution against the property of the defendant in like manner as judgments in civil cases are enforced: *Provided,* That where the judgment directs that the defendant shall be imprisoned until the fine or penalty imposed is paid, the issue of execution on the judgment shall not operate to discharge the defendant from imprisonment until the amount of the judgment is collected or otherwise paid."

§ 2153. Discharge of Indigent Convicts Imprisoned for Fines.

§ 1042, R. S., Comp. Stat. 1901, p. 724, 3 F. S. A. 99, Rose's Code, § 1607. "When a poor convict, sentenced by any court of the United States to pay a fine, or fine and cost, whether with or without imprisonment, has been confined in prison thirty days, solely for the nonpayment of such fine, or fine and cost, he may make application in writing to any commissioner of the United States court in the district where he is imprisoned, setting forth his inability to pay such fine, or fine and cost, and after notice to the district attorney of the United States, who may appear, offer evidence, and be heard, the commissioner shall proceed to hear and determine the matter; and if on examination it shall appear to him that such convict is unable to pay such fine, or fine and cost, and that he has not any property exceeding twenty dollars in

value, except such as is by law exempt from being taken on execution for debt, the commissioner shall administer to him the following oath: 'I do solemnly swear that I have not any property, real or personal, to the amount of twenty dollars, except such as is by law exempt from being taken on civil precept for debt by the laws of [state where oath is administered]; and that I have no property in any way conveyed or concealed, or, in any way disposed of, for my future use or benefit. So help me God.' And thereupon such convict shall be discharged, the commissioner giving to the jailer or keeper of the jail a certificate setting forth the facts."

§ *5296, R. S., Comp. St. 1901, p. 3608, 3 F. S. A. 106.* "When a poor convict, sentenced by any court of the United States to be imprisoned and pay a fine, or fine and cost, or to pay a fine, or fine and costs, has been confined in prison thirty days, solely for the nonpayment of such fine, or fine and costs, such convict may make application in writing to any commissioner of the United States court in the district where he is imprisoned, setting forth his inability to pay such fine, or fine and costs, and after notice to the district attorney of the United States, who may appear, offer evidence, and be heard, the commissioner shall proceed to hear and determine the matter. If on examination it shall appear to him that such convict is unable to pay such fine, or fine and costs, and that he has not any property exceeding twenty dollars in value, except such as is by law exempt from being taken on execution for debt, the commissioner shall administer to him the following oath: 'I do solemnly swear that I have not any property, real or personal, to the amount of twenty dollars, except such as is by law exempt from being taken on civil process for debt by the laws of [naming the state where oath is administered], and that I have no property in any way conveyed or concealed, or in any way disposed of, for my future use or benefit. So help me God.' Upon taking such oath, such convict shall be discharged; and the commissioner shall give to the keeper of the jail a certificate setting forth the facts."

§ 2154. Confinement in State Jail or Penitentiary When Use of so Allowed by State Law.

§ *5542, R. S., Comp. Stat. 1901, p. 3721, 6 F. S. A. 37, Rose's Code, § 1616.* "In every case where any criminal

convicted of any offense against the United States is sentenced to imprisonment and confinement to hard labor, it shall be lawful for the court by which the sentence is passed to order the same to be executed in any state jail or penitentiary within the district or state where such court is held, the use of which jail or penitentiary is allowed by the legislature of the state for that purpose."

§ 2155. Where No Penitentiary or Jail Suitable or Available, Attorney General May Designate in a Convenient State or Territory—Transportation of Prisoners—Change of Place to Preserve Health or Custody of Prisoner or Because of His Improper or Cruel Treatment.

§ 5546, R. S., 31 Stat. at L. 1450, Comp. St. 1901, p. 3723, 6 F. S. A. 41, Rose's Code, § 1620. "All persons who have been, or who may hereafter be, convicted of crime by any court of the United States, including consular courts, whose punishment is imprisonment in a district or territory or country where, at the time of conviction or at any time during the term of imprisonments, there may be no penitentiary or jail suitable for the confinement of convicts, or available therefor, shall be confined during the term for which they have been or may be sentenced, or during the residue of said term, in some suitable jail or penitentiary in a convenient state or territory, to be designated by the Attorney General, and shall be transported and delivered to the warden or keeper of such jail or penitentiary by the marshal of the district or territory where the conviction has occurred; and in case of convictions by a consular court the transportation shall be by some properly qualified agent or agents designated by the Department of State, the reasonable actual expense of transportation, necessary subsistence, and hire and transportation of guards and agent or agents to be defrayed from the appropriation for bringing home criminals; and if the conviction be had in the District of Columbia, the transportation and delivery shall be by the warden of the jail of that District, the reasonable actual expense of transportation, necessary subsistence, and hire and transportation of guards and the marshal, or the warden of the jail in the District of Columbia only, to be paid by the Attorney General out of the judiciary fund. But if, in the opinion of the Attorney General, the expense of transportation from any state, territory, or the District of Columbia in which

there is no penitentiary will exceed the cost of maintaining them in jail in the state, territory, or the District of Columbia during the period of their sentence, then it shall be lawful so to confine them therein for the period designated in their respective sentences. And the place of imprisonment may be changed in any case when, in the opinion of the Attorney General, it is necessary for the preservation of the health of the prisoner, or when, in his opinion, the place of confinement is not sufficient to secure the custody of the prisoner, or because of cruel and improper treatment: *Provided, however,* That no change shall be made in the case of any prisoner on the ground of the unhealthiness of the prisoner or because of his treatment, after his conviction and during his term of imprisonment, unless such change shall be applied for by such prisoner, or some one in his behalf."

§ 2156. Transportation of Criminals to Places of Imprisonment by Marshal.

§ 5, *Act March 3, 1891, ch. 529, 26 Stat. at L. 839, Comp. Stat. 1901, p. 3726, 6 F. S. A. 25, Rose's Code, § 1610.* "That the transportation of all United States prisoners convicted of crimes against the laws of the United States in any state, district, or territory, and sentenced to terms of imprisonment in a penitentiary, and their delivery to the superintendent, warden, or keeper of such United States prisons, shall be by the marshal of the district or territory where such conviction may occur, after the erection and completion of said prisons. That the actual expenses of such marshal, including transportation and subsistence, hire, transportation, and subsistence of guards, and the transportation and subsistence of the convict or convicts, be paid, on the approval of the Attorney General, out of the judiciary fund."

§ 2157. Confinement of Juvenile Offenders under Sixteen in House of Refuge.

§ 7, *Act March 3, 1891, ch. 529, 26 Stat. at L. 840, Comp. St. 1901, p. 3727, 6 F. S. A. 26.* "That this act shall not apply to minors who, in the judgment of the judges presiding over United States courts, should be committed to reformatory institutions. *And provided,* That nothing in this act shall be construed as prohibiting the courts of the United States from sentencing to or confining prisoners, either civil

or military, in the United States military prison at Fort Leavenworth, Kansas."

§ 5549, R. S., 17 Stat. at L. 35, Comp. Stat. 1901, p. 3725, 6 F. S. A. 46, Rose's Code, § 1623. "Juvenile offenders against the laws of the United States, being under the age of sixteen years, and who may hereafter be convicted of crime, the punishment whereof is imprisonment, shall be confined during the term of sentence in some house of refuge to be designated by the Attorney General, and shall be transported and delivered to the warden or keeper of such house of refuge by the marshal of the district where such conviction has occurred; or if such conviction be had in the District of Columbia, then the transportation and delivery shall be by the warden of the jail of that district, and the reasonable actual expense of the transportation, necessary subsistence, and hire, and transportation of assistants and the marshal or warden, only, shall be paid by the Attorney General, out of the judiciary fund."

§ 2158. Confinement of Juvenile Offenders under Twenty Separate from Prisoners over Twenty.

§ 9, Act March 3, 1891, ch. 529, 26 Stat. at L. 840, Comp. Stat. 1901, p. 3728, 6 F. S. A. 26, Rose's Code, § 1630. That the Attorney General shall be authorized to designate to which of said prisons persons convicted in such states or territories shall be carried for confinement: *Provided,* That in the construction of the prison buildings provided for in this act there shall be such arrangement of cells and yard space as that prisoners under twenty years of age shall not be in any way associated with prisoners above that age, and the management of the class under twenty years of age shall be as far as possible reformatory."

§ 2159. Mitigation or Remission of Fine, etc., by Secretary of Treasury upon Summary Investigation by District Judge.

§ 5292, R. S., Comp. St. 1901, p. 3604, 3 F. S. A. 101. "Whenever any person who shall have incurred any fine, penalty, or forfeiture, or disability, or may be interested in any vessel or merchandise which has become subject to any seizure, forfeiture, or disability by authority of any pro-

visions of law for imposing or collecting any duties or taxes, or relating to registering, recording, enrolling, or licensing vessels, and for regulating the same, or providing for the suppression of insurrections or unlawful combinations against the United States, shall prefer his petition to the judge of the district in which such fine, penalty, or forfeiture, or disability has accrued, truly and particularly setting forth the circumstances of his case, and shall pray that the same may be mitigated or remitted, the judge shall inquire, in a summary manner, into the circumstances of the case; first causing reasonable notice to be given to the person claiming such fine, penalty, or forfeiture, and to the attorney of the United States for such district, that each may have an opportunity of showing cause against the mitigation or remission thereof; and shall cause the facts appearing upon such inquiry to be stated and annexed to the petition, and direct their transmission to the Secretary of the Treasury. The Secretary shall thereupon have power to mitigate or remit such fine, forfeiture, or penalty, or remove such disability, or any part thereof, if, in his opinion, the same was incurred without wilful negligence, or any intention of fraud in the person incurring the same; and to direct the prosecution, if any has been instituted for the recovery thereof, to cease and be discontinued, upon such terms or conditions as he may deem reasonable and just."

§ 2160. Same—Rules and Mode of Proceeding May Be Prescribed by Secretary of Treasury.

§ *5293, R. S., Comp. Stat. 1901, p. 3605, 3 F. S. A. 103, Rose's Code, § 1418.* "The Secretary of the Treasury is authorized to prescribe such rules and modes of proceeding to ascertain the facts upon which an application for remission of a fine, penalty, or forfeiture is founded, as he deems proper, and, upon ascertaining them, to remit the fine, penalty, or forfeiture, if in his opinion it was incurred without wilful negligence or fraud, in either of the following cases:

"First. If the fine, penalty, or forfeiture was imposed under authority of any revenue law, and the amount does not exceed one thousand dollars.

"Second. Where the case occurred within either of the collection districts in the states of California or Oregon.

"Third. If the fine, penalty, or forfeiture was imposed

under authority of any provisions of law relating to the importation of merchandise from foreign contiguous territory, or relating to manifests for vessels enrolled or licensed to carry on the coasting trade on the northern, northeastern, and northwestern frontiers.

"Fourth. If the fine, penalty, or forfeiture was imposed by authority of any provisions of law for levying or collecting any duties or taxes, or relating to registering, recording, enrolling, or licensing vessels, and the case arose within the collection district of Alaska, or was imposed by virtue of any provisions of law relating to fur seals upon the islands of Saint Paul and Saint George."

§ 2161. Same—Penalty of Imprisonment or Removal from Office Excepted—Preservation of Informer's Right to Share of Fine, etc.

§ *5294, R. S., Comp. St. 1901, p. 3607, 3 F. S. A. 104.* "The Secretary of the Treasury may, upon application therefor, remit or mitigate any fine, penalty, or forfeiture provided for in laws relating to vessels, or discontinue any prosecution to recover penalties or relating to forfeitures denounced in such laws, excepting the penalty of imprisonment or of removal from office, upon such terms as he, in his discretion, shall think proper; and all rights granted to informers by such laws shall be held subject to the Secretary's powers of remission, except in cases where the claims of any informer to the share of any penalty shall have been determined by a court of competent jurisdiction prior to the application for the remission of the penalty or forfeiture; and the Secretary shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as he may deem proper."

§ 2162. Execution of Death Penalty.

§ *323, Penal Code, 1909 Supp. F. S. A. 493.* "The manner of inflicting the punishment by death shall be by hanging."

This section supersedes without change § 5325, R. S., Comp. St. 1901, p. 3620, 2 F. S. A. 354.

§ 2163. Death Penalty Abolished except in Certain Cases.

§ *3, Act Jan. 15, 1897, ch. 29, 29 Stat. at L. 487, Comp. St. 1901, p. 3621, 2 F. S. A. 357.* "That the punishment of death prescribed for any offense specified by the statutes of the United States, except in section fifty-three hundred and thirty-two, thirteen hundred and forty-two, sixteen hundred and twenty-four, fifty-three hundred and thirty-nine, and fifty-three hundred and forty-five, Revised Statutes, is hereby abolished, and all laws and parts of laws inconsistent with this act are hereby repealed."

§ 2164. Life Imprisonment Substituted for Death Penalty when Lesser Penalty in Court's Discretion.

§ *2, Act Jan. 15, 1897, ch. 29, 29 Stat. at L. 487, Comp. St. 1901, p. 3620, 2 F. S. A. 357.* "That except offenses mentioned in sections fifty-three hundred and thirty-two, thirteen hundred and forty-two, sixteen hundred and twenty-four, fifty-three hundred and thirty-nine, and fifty-three hundred and forty-five, Revised Statutes, when a person is convicted of any offense to which the punishment of death is now specifically affixed by the laws of the United States, he shall be sentenced to imprisonment at hard labor for life, and when any person is convicted of an offense to which the punishment of death, or a lesser punishment, in the discretion of the court, is affixed, the maximum punishment shall be imprisonment at hard labor for life."

§ 2165. No Corruption of Blood or Forfeiture of Estate.

§ *324, Penal Code, 1909 Supp. F. S. A. 493.* "No conviction shall work corruption of blood or forfeiture of estate."

This section supersedes without change § 5326, R. S., Comp. St. 1901, p. 3620, 2 F. S. A. 354.

§ 2166. Whipping and Pillory Abolished.

§ *325, Penal Code, 1909 Supp. F. S. A. 493.* "The punishment of whipping or standing in the pillory shall not be inflicted."

This section supersedes without change § 5327, R. S., Comp. St. 1901, p. 3622, 2 F. S. A. 354.

§ 2167. Pardoning Power of the President.

§ 327, Penal Code, 1909 Supp. F. S. A. 493. "Whenever, by the judgment of any court or judicial officer of the United States, in any criminal proceeding, any person is sentenced to two kinds of punishment, the one pecuniary and the other corporal, the president shall have full discretionary power to pardon or remit, in whole or in part, either one of the two kinds, without in any manner impairing the legal validity of the other kind, or any portion of either kind, not pardoned or remitted."

This section supersedes § 5330, R. S., Comp. St. 1901, p. 3622, 2 F. S. A. 355.

§ 2168. Parole of Prisoners.

Act January 23, 1913, ch. 9, 37 Stat. at L. 650. "That every prisoner who has been or may hereafter be convicted of any offense against the United States and is confined in execution of the judgment of such conviction in any United States penitentiary or prison, for a definite term or terms of over one year, or for the term of his natural life, whose record of conduct shows that he has observed the rules of such institution, and who, if sentenced for a definite term, has served one third of the total of such term or terms for which he was sentenced, or, if sentenced for the term of his natural life, has served not less than fifteen years, may be released on parole as hereinafter provided."

CHAPTER 43.

EXTRADITION.

Sec.
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§ 2180. When and by Whom Warrant may Issue for Arrest of Fugitive from Justice from a Foreign Country.

First Pt. § 5270, R. S., Comp. Stat. 1901, p. 3591, 3 F. S. A. 68, Rose's Code, § 1642. "Whenever there is a treaty or convention for extradition between the government of the United States and any foreign government, any justice of the Supreme Court, circuit judge, district judge,

commissioner, authorized so to do by any of the courts of the United States, or judge of a court of record of general jurisdiction of any state, may, upon complaint made under oath, charging any person found within the limits of any state, district, or territory, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. . . ."

§ 2181. Person Held for Extradition only on Evidence Establishing Probable Cause.

Pt. § 5270, R. S., Comp. Stat. 1901, p. 3591, 3 F. S. A. 68, Rose's Code, § 1642. ". . . *Provided further,* That such proceedings shall be had before a judge of the courts of the United States only, who shall hold such person on evidence establishing probable cause that he is guilty of the offense charged: . . ."

§ 2182. No Extradition for Political Offense.

Pt. § 5270, R. S., Comp. Stat. 1901, p. 3591, 3 F. S. A. 68, Rose's Code, § 1642. ". . . *And provided further,* That no return or surrender shall be made of any person charged with the commission of any offense of a political nature. . . . . ."

§ 2183. Extradition to Foreign Country or Territory Occupied or under Control of United States of Persons Committing Certain Offenses.

Pt. § 5270, R. S., Comp. Stat. 1901, p. 3591, 3 F. S. A. 68, Rose's Code, § 1642. ". . . *Provided,* That whenever any foreign country or territory, or any part thereof, is occupied by or under the control of the United States, any person who shall violate, or who has violated, the criminal laws in force therein, by the commission of any of the following offenses, namely: Murder and assault with intent to commit murder; counterfeiting or altering money, or uttering or bringing into circulation counterfeit or altered money; counterfeiting certificates or coupons of public indebtedness,

bank notes, or other instruments of public credit, and the utterance or circulation of the same; forgery or altering and uttering what is forged or altered; embezzlement or criminal malversation of the public funds, committed by public officers, employees, or depositaries; larceny or embezzlement of an amount not less than one hundred dollars in value; robbery; burglary, defined to be the breaking and entering by night time into the house of another person with intent to commit a felony therein; and the act of breaking and entering the house or building of another, whether in the day or nighttime, with the intent to commit a felony therein; the act of entering, or of breaking and entering, the offices of the government and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance or other companies, with the intent to commit a felony therein; perjury or the subornation of perjury; rape, arson; piracy by the law of nations; murder, assault with intent to kill, and manslaughter, committed on the high seas, on board a ship owned by or in control of citizens or residents of such foreign country or territory, and not under the flag of the United States or of some other government; malicious destruction of or attempt to destroy railways, trams, vessels, bridges, dwellings, public edifices, or other buildings, when the act endangers human life, and who shall depart or flee, or who has departed or fled, from justice therein to the United States, any territory thereof or to the District of Columbia,—shall, when found therein, be liable to arrest and detention by the authorities of the United States, and on the written request or requisition of the military governor or other chief executive officer in control of such foreign country or territory shall be returned and surrendered, as hereinafter provided, to such authorities for trial under the laws in force in the place where such offense was committed. All the provisions of sections fifty-two hundred and seventy to fifty-two hundred and seventy-seven of this title, so far as applicable, shall govern proceedings authorized by this proviso: . . ."

§ 2184. Hearing—Certification of Testimony to Secretary of State—Warrant for Commitment Pending Surrender.

Pt. § 5270, R. S., Comp. Stat. 1901, p. 3591, 3 F. S. A. 68, Rose's Code, § 1642. ". . . If, on such hearing, he deems the evidence sufficient to sustain the charge under the

provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made. . . ."

§ 2185. Hearing to Be Public on Land.

§ 1, Act Aug. 3, 1882, ch. 378, 22 Stat. at L. 215, Comp. Stat. 1901, p. 3593, 3 F. S. A. 89, Rose's Code, § 1643. "That all hearings in cases of extradition under treaty stipulation or convention shall be held on land, publicly, and in a room or office easily accessible to the public."

§ 2186. Witnesses for Indigent Prisoners.

§ 3, Act Aug. 3, 1882, ch. 378, Comp. Stat. 1901, p. 3593, 3 F. S. A. 89, Rose's Code, § 1643. "That on the hearing of any case under a claim of extradition by any foreign government, upon affidavit being filed by the person charged, setting forth that there are witnesses whose evidence is material to his defense, that he cannot safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the judge or commissioner before whom such claim for extradition is heard may order that such witnesses be subpœnaed; and in such cases the costs incurred by the process, and the fees of witnesses, shall be paid in the same manner that similar fees are paid in the case of witnesses subpœnaed in behalf of the United States."

§ 2187. Evidence on the Hearing.

§§ 5 and 6, Act Aug. 3, 1882, ch. 378, 22 Stat. at L. 216, Comp. Stat. 1901, p. 3593, 3 F. S. A. 89, Rose's Code, § 1643. "Sec. 5 (Evidence on hearing.) That in all cases where any depositions, warrants, or other papers or copies thereof shall be offered in evidence upon the hearing of any extradition case under title sixty-six of the Revised Statutes of the United States, such depositions, warrants, and other papers, or the copies thereof, shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they

shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any deposition, warrant, or other paper or copies thereof, so offered, are authenticated in the manner required by this act."

"Sec. 6. (Repeal.) The act approved June nineteenth, eighteen hundred and seventy-six, entitled, "An Act to Amend Section fifty-two hundred and seventy-one of the Revised Statutes of the United States," and so much of said section fifty-two hundred and seventy-one of the Revised Statutes of the United States as is inconsistent with the provisions of this act are hereby repealed."

§ 5271, R. S., Comp. Stat. 1901, p. 3593, 3 F. S. A. 76, Rose's Code, § 1645. "(Evidence on the hearing.) In every case of complaint, and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any foreign country may have been granted, certified under the hand of the person issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended, if they are authenticated in such manner as would entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party escaped. The certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any paper or other document so offered is authenticated in the manner required by this section."

§ 2188. Surrender of Person by Secretary of State for a Fair and Impartial Trial.

Last Pt. § 5270, R. S., Comp. Stat. 1901, p. 3591, 3 F. S. A. 68, Rose's Code, § 1642. ". . . If so held such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States, and such authorities shall secure to such a person a fair and impartial trial."

First Pt. § 5272, R. S., Comp. Stat. 1901, p. 3593, 3 F. S.

A. 77, Rose's Code, § 1647. "It shall be lawful for the Secretary of State, under his hand and seal of office, to order the person so committed to be delivered to such person as shall be authorized, in the name and on behalf of such foreign government, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly; and it shall be lawful for the person so authorized to hold such person in custody, and to take him to the territory of such foreign government, pursuant to such treaty. . . ."

§ 2189. Retaking of Escaped Person Held for Extradition.

Last Pt. § 5272, R. S., Comp. Stat. 1901, p. 3595, 3 F. S. A. 77, Rose's Code, § 1647. ". . . If the person so accused shall escape out of any custody to which he shall be committed, or to which he shall be delivered, it shall be lawful to retake such person in the same manner as any person accused of any crime against the laws in force in that part of the United States to which he shall so escape, may be retaken on an escape."

§ 2190. Time Allowed for Extradition Two Months after Commitment.

§ 5273, R. S., Comp. Stat. 1901, p. 3596, 3 F. S. A. 77, Rose's Code, § 1648. "Whenever any person who is committed under this title or any treaty, to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States, it shall be lawful for any judge of the United States, or of any state, upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the Secretary of State, to order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered."

§ 2191. Extradition Provisions Continue During Existence of Treaty.

§ 5274, R. S., Comp. Stat. 1901, p. 3596, 3 F. S. A. 77,

Rose's Code, § 1649. "The provisions of this title relating to the surrender of persons who have committed crimes in foreign countries shall continue in force during the existence of any treaty of extradition with any foreign government, and no longer."

§ 2192. Transportation and Protection of Person Extradited to the United States.

§ 5275, R. S., Comp. Stat. 1901, p. 3596, 3 F. S. A. 78, Rose's Code, § 1650. "Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any crime of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safe-keeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the crimes or offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such crimes or offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States, or of the militia thereof, as may be necessary for the safe-keeping and protection of the accused."

§ 2193. Same—Powers of Agent Receiving Such Person Extradited from Foreign Country.

§ 5276, R. S., Comp. Stat. 1901, p. 3597, 3 F. S. A. 78, Rose's Code, § 1651. "Any person duly appointed as agent to receive, in behalf of the United States, the delivery, by a foreign government, of any person accused of crime committed within the jurisdiction of the United States, and to convey him to the place of his trial, shall have all the powers of a marshal of the United States, in the several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for the prisoner's safe-keeping."

§ 2194. Same—Penalty for Opposing Agent or Attempting Rescue.

§ 5277, R. S., Comp. Stat. 1901, p. 3597, 3 F. S. A. 78, Rose's Code, § 1652. "Every person who knowingly and wilfully obstructs, resists, or opposes such agent in the execution

of his duties, or who rescues or attempts to rescue such prisoner, whether in the custody of the agent or of any officer or person to whom his custody has lawfully been committed, shall be punishable by a fine of not more than one thousand dollars, and by imprisonment for not more than one year."

§ 2195. Interstate Extradition.

§ 5278, R. S., Comp. Stat. 1901, p. 3597, 3 F. S. A. 78, Rose's Code, § 1654. "Whenever the executive authority of any state or territory demands any person as a fugitive from justice, of the executive authority of any state or territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any state or territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged has fled, it shall be the duty of the executive authority of the state or territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the state or territory making such demand shall be paid by such state or territory."

§ 2196. Penalty for Resisting Agent or Attempting Rescue, Interstate Extradition.

§ 5279, R. S., Comp. Stat. 1901, p. 3598, 3 F. S. A. 88, Rose's Code, § 1655. "Any agent so appointed who receives the fugitive into his custody shall be empowered to transport him to the state or territory from which he has fled. And every person who, by force, sets at liberty or rescues the fugitive from such agent while so transporting him, shall be fined not more than five hundred dollars or imprisoned not more than one year."

§ 2197. Arrest of Deserting Seaman from Foreign Vessel.

§ 5280, R. S., Comp. Stat. 1901, p. 3598, 3 F. S. A. 88,

Rose's Code, § 1523. "On application of a consul or vice consul of any foreign government having a treaty with the United States stipulating for the restoration of seamen deserting, made in writing, stating that the person therein named has deserted from a vessel of any such government, while in any port of the United States, and on proof by the exhibition of the register of the vessel, ship's roll, or other official document, that the person named belonged, at the time of desertion, to the crew of such vessel, it shall be the duty of any court, judge, commissioner of any circuit court, justice, or other magistrate, having competent power, to issue warrants to cause such person to be arrested for examination. If, on examination, the facts stated are found to be true, the person arrested, not being a citizen of the United States, shall be delivered up to the consul or vice consul, to be sent back to the dominions of any such government, or, on the request and at the expense of the consul or vice consul, shall be detained until the consul or vice consul finds an opportunity to send him back to the dominions of any such government. No person so arrested shall be detained more than two months after his arrest; but at the end of that time shall be set at liberty, and shall not be again molested for the same cause. If any such deserter shall be found to have committed any crime or offense, his surrender may be delayed until the tribunal before which the case shall be depending, or may be cognizable, shall have pronounced its sentence, and such sentence shall have been carried into effect."

CHAPTER 44.

HABEAS CORPUS.

Sec.
2200. Constitutional Provision.
2201. Courts Authorized to Issue Writ of Habeas Corpus.
2202. Power of Judges to Grant Writs of Habeas Corpus.
2203—Cases Where Federal Writ of Habeas Corpus will Issue.
2204. Application for Writ of Habeas Corpus—How Made.
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2210. Denial of Return—Counter Allegations—Amendments.
2211. Summary Hearing—Disposition of Party.
2212. In Cases Involving the Law of Nations—Notice to be Served on State Attorney General.

§ 2200. Constitutional Provision.

Pt. § 9, Art. 1, U. S. Const. "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

§ 2201. Courts Authorized to Issue Writ of Habeas Corpus.

§ 262, Judicial Code,[a] *36 Stat. at L. 1162, Comp. St. 1911, p. 235, 1912 Supp. F. S. A. v. 1, p. 241.* "The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

This section supersedes section 751 of the Revised Statutes.

The character of the restraint or imprisonment suffered by a

[a] For Annotation of this § 262, Judicial Code, see footnote [d], ante, our § 1054.

party applying for the writ of habeas corpus must be actual confinement or the present means of enforcing it. Something more than moral restraint is necessary to make a case.[1] Jurisdiction of a writ of habeas corpus does not depend upon the question whether there has been a formal commitment or not.[2] Arrest under a civil process is not a case for remedy by habeas corpus.[3] In order to obtain the benefit of this writ and to procure its being issued by the court or justice or judge who has a right to order its issue, it should be made to appear, upon the application for the writ, that it is founded upon some matter which justifies the exercise of Federal authority, and which is necessary to the enforcement of rights under the Constitution, laws, or treaties of the United States.[4] The Supreme Court has authority to issue the writ of habeas corpus, but except in cases affecting ambassadors, other public ministers, or consuls, and those in which a state is a party, it can only be done for a review of the judicial decision of some inferior officer or court.[5] The courts of the United States will not discharge the prisoner by habeas corpus in advance of a final determination of his case in the courts of the state; and even after such final determination in those courts will generally leave the petitioner to the usual and orderly course of proceeding by writ of error from the Supreme Court.[6] When a person has been discharged upon habeas corpus the issues of law and fact involved are *res judicata*, and the person so discharged cannot, for the same cause, be again lawfully arrested.[7]

1 Wales v. Whitney, 114 U. S. 564, 29 L. ed. 277, 5 Sup. Ct. Rep. 1050.

2 Matter of McDonald, 9 Am. L. Reg. 661, 16 Fed. Cas. No. 8,751.

3 Ex parte Wilson, 6 Cranch, 52, 3 L. ed. 149. See also In re Mineau, 45 Fed. 188.

4 In re Burrus, 136 U. S. 586, 34 L. ed. 1500, 10 Sup. Ct. Rep. 850.

5 Ex parte Hung Hang, 108 U. S. 552, 27 L. ed. 811, 2 Sup. Ct. Rep. 863; In re Lane, 135 U. S. 443, 34 L. ed. 219, 10 Sup. Ct. Rep. 760; Ex parte Terry, 128 U. S. 289, 32 L. ed. 405, 9 Sup. Ct. Rep. 77; Ex parte Parks, 93 U. S. 18, 23 L. ed. 787; Ex parte Siebold, 100 U. S. 375, 25 L. ed. 718.

6 Whitten v. Tomlinson, 160 U. S. 231, 40 L. ed. 406, 16 Sup. Ct. Rep. 297; Baker v. Grice, 169 U. S. 284, 42 L. ed. 748, 18 Sup. Ct. Rep. 323; Kohl v. Lehlback, 160 U. S. 293, 40 L. ed. 432, 16 Sup. Ct. Rep. 304; In re Frederich, 149 U. S. 70, 37 L. ed. 653, 13 Sup. Ct. Rep. 793.

7 United States v. Chung Shee, 71 Fed. 277. But see In re White, 45 Fed. 237; Ex parte Kaine, 3 Blatchf. 1, Fed. Cas. No. 7,597.

§ 2202. Power of Judges to Grant Writs of Habeas Corpus.

> § *752, R. S., Comp. Stat. 1901, p. 592, 3 F. S. A. 167, Rose's Code, § 1673.* "The several justices and judges of the said courts, within their respective jurisdiction, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of restraint of liberty."

The clause, "cause of restraint of liberty," will allow writs of habeas corpus to stand, and at common law they do stand, for all unlawful restraints, whether under color of process, or through the illegal acts of individuals, or under a commitment to an insane asylum.[8]

§ 2203. Cases Where Federal Writ of Habeas Corpus will Issue.

> § *753, R. S., Comp. Stat. 1901, p. 592, 3 F. S. A. 167, Rose's Code, § 1674.* "The writ of habeas corpus shall in no case extend to a prisoner in jail, unless where he is in custody under or by color of the authority of the United States, or is committed for trial before some court thereof; or is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof; or is in custody in violation of the Constitution or of a law or treaty of the United States; or, being a subject or citizen of a foreign state, and domiciled therein, is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, or order, or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations; or unless it is necessary to bring the prisoner into court to testify."

In all cases where Federal officers, civil or military, have the custody and control of a person claimed to be unlawfully restrained of liberty, such person is restrained of liberty under color of authority of the United States, and the Federal courts

[8] King v. McLean Asylum, 64 Fed. 331, 12 C. C. A. 145.

can proceed to determine the question of unlawful restraint, because no other court can properly do so.[9]

§ 2204. Application for Writ of Habeas Corpus—How Made.

> § *754, R. S., Comp. Stat. 1901, p. 593, 3 F. S. A. 172, Rose's Code, § 1675.* "Application for writ of habeas corpus shall be made to the court, or justice, or judge authorized to issue the same, by complaint in writing, signed by the person for whose relief it is intended, setting forth the facts concerning the detention of the party restrained, in whose custody he is detained, and by virtue of what claim or authority, if known. The facts set forth in the complaint shall be verified by the oath of the person making the application."

It is not enough in order to require the court to issue a writ of habeas corpus, that the petition alleges that the prisoner is held in violation of the Constitution of the United States, or of a treaty with a foreign nation. That is a mere formal allegation, covering conclusions of law as well as of fact, and the petition must present specific allegations raising an issue.[10]

Facts duly alleged may be taken to be true, unless denied by the return or controlled by other evidence. But no allegation of fact in the petition can be assumed to be admitted unless distinct and unambiguous.[11]

§ 2205. Allowance and Direction of Writ of Habeas Corpus.

> § *755, R. S., Comp. Stat. 1901, p. 593, 3 F. S. A. 173, Rose's Code, § 1676.* "The court, or justice, or judge to whom such application is made shall forthwith award a writ of habeas corpus, unless it appears from the petition itself

[9] United States v. Crook, 5 Dill. 453, Fed. Cas. No. 14,891; Matter of McDonald, 9 Am. L. Reg. 661, 16 Fed. Cas. No. 8,751; Matter of Keeler, Hempst. 306, Fed. Cas. No. 7,637.

[10] In re Storti, 109 Fed. 807; King v. McLean Asylum, 64 Fed. 325, 12 C. C. A. 139, 26 L.R.A. 784.

[11] Whitten v. Tomlinson, 160 U. S. 231, 40 L. ed. 406, 16 Sup. Ct. Rep. 297; Kohl v. Lehlback, 160 U. S. 293, 40 L. ed. 432, 16 Sup. Ct. Rep. 304.

that the party is not entitled thereto. The writ shall be directed to the person in whose custody the party is detained."

It is not a question, at the time of the application for the writ, whether or not the facts alleged in the petition are true or false. They are to be verified by the oath of the petitioner, and if he sets out in his petition what is necessary to give a Federal court jurisdiction, the writ must issue, and the truth or falsity of the facts alleged must be determined at the hearing.[12]

§ 2206. Time of Return of Writ of Habeas Corpus.

§ 756, R. S., Comp. Stat. 1901, p. 593, 3 F. S. A. 173, Rose's Code, § 1677. "Any person to whom such writ is directed shall make due return thereof within three days thereafter, unless the party be detained beyond the distance of twenty miles; and if beyond that distance and not beyond a distance of a hundred miles, within ten days; and if beyond the distance of a hundred miles, within twenty days."

A reasonable time has always been allowed for making the return, and it is not to be presumed that one will not be made.[13]

§ 2207. Form of Return of Writ of Habeas Corpus.

§ 757, R. S., 14 Stat. at L. 385, Comp. Stat. 1901, p. 593, 3 F. S. A. 173, Rose's Code, § 1678. "The person to whom the writ is directed shall certify to the court, or justice, or judge before whom it is returnable the true cause of the detention of such party."

A return should be signed by the person to whom the writ is directed or should be accompanied by an explanation why that is not done.[14]

[12] Electoral College's Case, 1 Hughes, 571, Fed. Cas. No. 4,336; In re Greenwald, 77 Fed. 590.

[13] Ex parte Baez, 177 U. S. 378, 44 L. ed. 813, 20 Sup. Ct. Rep. 673.

[14] Seavey v. Seymour, 3 Cliff. 439, Fed. Cas. No. 12,596.

§ 2208. Producing the Person.

§ 758, R. S., Comp. Stat. 1901, p. 593, 3 F. S. A. 174, Rose's Code, § 1679. "The person making the return shall at the same time bring the body of the party before the judge who granted the writ."

§ 2209. The Day for Hearing.

§ 759, R. S., Comp. Stat. 1901, p. 594, 3 F. S. A. 174, Rose's Code, § 1680. "When the writ is returned, a day shall be set for the hearing of the cause, not exceeding five days thereafter, unless the party petitioning requests a longer time."

§ 2210. Denial of Return—Counter Allegations—Amendments.

§ 760, R. S., 14 Stat. at L. 835, Comp. Stat. 1901, p. 594, 3 F. S. A. 174, Rose's Code, § 1681. "The petitioner or the party imprisoned or restrained may deny any of the facts set forth in the return, or may allege any other facts that may be material in the case. Said denials or allegations shall be under oath. The return and all suggestions made against it may be amended, by leave of the court, or justice, or judge, before or after the same are filed, so that thereby the material facts may be ascertained."

The averments of the answer to the return will be taken as denied by the respondent, as no further pleading is required by the statute.[15]

§ 2211. Summary Hearing—Disposition of Party.

§ 761, R. S., 14 Stat. at L. 385, Comp. Stat. 1901, p. 594, 3 F. S. A. 174, Rose's Code, § 1682. "The court or justice or judge shall proceed in a summary way to determine the facts of the case, by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require."

This section means that if he is held in custody in violation of the Constitution or a law of the United States, or for an act

[15] Matter of Leary, 10 Ben. 197, Fed. Cas. No. 8,162.

done or omitted in pursuance of a law of the United States, he must be discharged.[16] Where a person is held on process on a final judgment, after conviction on a trial on an indictment, and a habeas corpus is issued, and the return to the writ states the process as the cause of detention, the "facts" the court is required to determine, either on such return alone or by the aid of a certiorari, are the final judgment, the conviction, the fact of trial, and the indictment. The particulars of the evidence which led to the conviction are no part of such "facts." [17] In proceedings upon habeas corpus the authority of the courts is not so restricted as to compel them in every instance either to discharge the prisoner absolutely or to remand him to the custody of the person producing him, but the provision empowering and requiring the court to "dispose of the party as law and justice require," authorizes the court to commit the custody of the party to anyone showing a right thereto.[18] The injunction to hear the case summarily, and thereupon dispose of the party as law and justice may require, does not deprive the court of discretion as to the time and mode in which it will exert the powers conferred upon it. That discretion should be exercised in the light of the relations existing, under our system of government, between the judicial tribunals of the Union and of the states, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the Constitution.[19]

§ 2212. In Cases Involving the Law of Nations—Notice to be Served on State Attorney General.

§ 762, R. S., 5 Stat. at L. 539, Comp. Stat. 1901, p. 594, 3 F. S. A. 175, Rose's Code, § 1683. "When a writ of habeas corpus is issued in the case of any prisoner who, being a subject or citizen of a foreign state and domiciled therein, is

16 In re Neagle, 135 U. S. 1, 34 L. ed. 55, 10 Sup. Ct. Rep. 658; In re Anderson, 94 Fed. 487.

17 In re Stupp, 12 Blatchf. 501, Fed. Cas. No. 13,563.

18 Motherwell v. United States, 107 Fed. 437, 48 C. C. A. 97; Medley Petitioner, 134 U. S. 160, 33 L. ed. 835, 10 Sup. Ct. Rep. 384.

19 Ex parte Royall, 117 U. S. 254, 29 L. ed. 872, 6 Sup. Ct. Rep. 742; Minnesota v. Brundage, 180 U. S. 499, 45 L. ed. 639, 21 Sup. Ct. Rep. 455.

committed or confined or in custody by or under authority or law of any one of the United States, or process founded thereon, on account of any act done or omitted under an alleged right, title, authority, privilege, protection, or exemption, claimed under the commission or order or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations, notice of the said proceeding, to be prescribed by the court or justice or judge at the time of granting said writ, shall be served on the attorney general or other officer prosecuting the pleas of said state."

CHAPTER 45.

MISCELLANEOUS PROVISIONS.

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§ 2220. Construction of Code.

§ 293, Judicial Code,[a] *36 Stat. at L. 1167, Comp. St. 1911, p. 244, 1912 Supp. F. S. A. v. 1, p. 250.* "The pro-

[a] New Legislation.

visions of sections one to five, both inclusive, of the Revised Statutes (§ 2221, infra), shall apply to and govern the construction of the provisions of this act. The words 'this title,' wherever they occur herein, shall be construed to mean this act."

§ *294, Judicial Code,*[b] *36 Stat. at L. 1167, Comp. St. 1911, p. 244, 1912 Supp. F. S. A. v. 1, p. 250.* "The provisions of this act, so far as they are substantially the same as existing statutes, shall be construed as continuations thereof, and not as new enactments, and there shall be no implication of a change of intent by reason of a change of words in such statute, unless such change of intent shall be clearly manifest."

§ *295, Judicial Code,*[c] *36 Stat. at L. 1167, Comp. St. 1911, p. 244, 1912 Supp. F. S. A. v. 1, p. 250.* "The arrangement and classification of the several sections of this act have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the chapter under which any particular section is placed."

§ *292, Judicial Code,*[d] *36 Stat. at L. 1167, Comp. St. 1911, p. 244, 1912 Supp. F. S. A. v. 1, p. 249.* "Wherever, in any law not contained within this act, a reference is made to any law revised or embraced herein, such reference, upon the taking effect hereof, shall be construed to refer to the section of this act into which has been carried or revised the provision of law to which reference is so made."

§ 2221. Definitions.

§§ *1–5, R. S., Comp. St. 1901, pp. 3–4, 7 F. S. A. 134.* "§ 1. In determining the meaning of the Revised Statutes, or of any act or resolution of Congress passed subsequent to February twenty-fifth, eighteen hundred and seventy-one, words importing the singular number may extend and be applied to several persons or things; words importing the

b In general, Goins v. Southern Pacific Co. 198 Fed. 432; Puget Sound Sheet Metal W. v. Great Northern Ry. Co. 195 Fed. 350.

c New Legislation. In general, Puget Sound Sheet Metal W. v. Great Northern Ry. Co. 195 Fed. 350.

d New Legislation.

plural number may include the singular; words importing the masculine gender may be applied to females; the words 'insane person' and 'lunatic' shall include every idiot, *non compos,* lunatic, and insane person; the word 'person' may extend and be applied to partnerships and corporations, and the reference to any officer shall include any person authorized by law to perform the duties of such office, unless the context shows that such words were intended to be used in a more limited sense; and a requirement of an 'oath' shall be deemed complied with by making affirmation in judicial form.

"§ 2. (County.) The word 'county' includes a parish, or any other equivalent subdivision of a state or territory of the United States.

"§ 3. (Vessel.) The word 'vessel' includes every description of water craft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

"§ 4. (Vehicle.) The word 'vehicle' includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land.

"§ 5. (Company, association.) The word 'company' or 'association,' when used in reference to a corporation, shall be deemed to embrace the words 'successors and assigns of such company or association,' in like manner as if these last-named words, or words of similar import, were expressed."

§ 2222. Priority of Revenue Cases or Where State a Party.

§ *949, R. S., Comp. Stat. 1901, p. 695, 4 F. S. A. 594.* "When a state is a party, or the execution of the revenue laws of a state is enjoined or stayed, in any suit in a court of the United States, such state or the party claiming under the revenue laws of a state, the execution whereof is enjoined or stayed, shall be entitled, on showing sufficient reason, to have the cause heard at any time after it is docketed, in preference to any civil cause pending in such court between private parties."

§ 2223. Suits under Revenue and Postal Laws, etc., Brought in Name of United States.

§ *919, R. S., Comp. Stat. 1901, p. 685, 4 F. S. A. 586.* "All suits for the recovery of any duties, imposts, or taxes, or for the enforcement of any penality or forfeiture provided by

any act respecting imports or tonnage, or the registering and recording or enrolling and licensing of vessels, or the internal revenue, or direct taxes, and all suits arising under the postal laws, shall be brought in the name of the United States."

§ 2224. District Attorney's Prosecution of Fraud on the Revenue.

§ *838, R. S., Comp. Stat. 1901, p. 644, 4 F. S. A. 157, Rose's Code,* § *544.* "It shall be the duty of every district attorney to whom any collector of customs, or of internal revenue, shall report, according to law, any case in which any fine, penalty, or forfeiture has been incurred in the district of such attorney for the violation of any law of the United States relating to the revenue, to cause the proper proceedings to be commenced and prosecuted without delay, for the fines, penalties, and forfeitures, in such case provided, unless, upon inquiry and examination, he shall decide that such proceedings cannot probably be sustained, or that the ends of public justice do not require that such proceedings should be instituted; in which case he shall report the facts in customs cases to the Secretary of the Treasury, and in internal revenue cases to the Commissioner of Internal Revenue for their direction. And for the expenses incurred and services rendered in all such cases, the district attorney shall receive and be paid from the Treasury such sum as the Secretary of the Treasury shall deem just and reasonable, upon the certificate of the judge before whom such cases are tried or disposed of: *Provided,* That the annual compensation of such district attorney shall not exceed the maximum amount prescribed by law, by reason of such allowance and payment."

§ 2225. Warrants for Searches and Seizures under Customs Laws.

§ *3066, R. S., Comp. Stat. 1901, p. 2008, 2 F. S. A. 743, Rose's Code,* § *1510.* "If any collector, naval officer, surveyor, or other person specially appointed by either of them or inspector shall have cause to suspect a concealment of any merchandise in any particular dwelling-house, store-building, or other place, they, or either of them, upon proper application on oath to any justice of the peace, or district judge of cities, police justice, or any judge of the circuit or district court of the United States, or any Commissioner of the United States circuit court, shall be entitled to a warrant

to enter such house, store, or other place, in the daytime only, and there to search for such merchandise; and if any shall be found, to seize and secure the same for trial; and all such merchandise, upon which the duties shall not have been paid, or secured to be paid, shall be forfeited."

§ 2226. Procedure in Seizure Cases under Customs Laws.

§ *923, R. S., Comp. Stat. 1901, p. 686, 3 F. S. A. 96, Rose's Code, §§ 1385, 1515.* "When any vessel, goods, wares, or merchandise are seized by any officer of the customs, and prosecuted for forfeiture by virtue of any law respecting the revenue, or the registering and recording, or the enrolling and licensing of vessels, the court shall cause fourteen days' notice to be given of such seizure and libel, by causing the substance of such libel, with the order of the court thereon, setting forth the time and place appointed for trial, to be inserted in some newspaper published near the place of seizure, and by posting up the same in the most public manner for the space of fourteen days, at or near the place of trial; and proclamation shall be made in such manner as the court shall direct. And if no person appears and claims such vessel, goods, wares, or merchandise, and gives bond to defend the prosecution thereof and to respond the cost in case he shall not support his claim, the court shall proceed to hear and determine the cause according to law."

§ 2227. Bailing Property Seized under Customs Laws.

§ *938, R. S., Comp. Stat. 1901, p. 690, 3 F. S. A. 96, Rose's Code, §§ 1393, 1517.* "Upon the prayer of any claimant to the court, that any vessel, goods, wares, or merchandise, seized and prosecuted under any laws respecting the revenue from imports or tonnage, or the registering and recording, or the enrolling and licensing of vessels, or any part thereof, should be delivered to him, the court shall appoint three proper persons to appraise such property, who shall be sworn in open court, or before a commissioner appointed by the district court to administer oaths to appraisers, for the faithful discharge of their duty; and the appraisement shall be made at the expense of the party on whose prayer it is granted. If, on the return of the appraisement, the claimant, with one or more sureties, to be approved by the court, shall execute a bond to the United States for the payment of a sum equal to the sum at which the property

prayed to be delivered is appraised, and produce a certificate from the collector of the district where the trial is had, and of the naval officer thereof, if any there be, that the duties on the goods, wares, and merchandise, or tonnage duty on the vessel so claimed, have been paid or secured in like manner as if the same had been legally entered, the court shall, by rule, order such vessel, goods, wares, or merchandise to be delivered to such claimant; and the said bond shall be lodged with the proper officer of the court. If judgment passes in favor of the claimant, the court shall cause the said bond to be canceled; but if judgment passes against the claimant, as to the whole or any part of such vessel, goods, wares, or merchandise, and the claimant does not within twenty days thereafter pay into the court, or to the proper officer thereof, the amount of the appraised value of such vessel, goods, wares, or merchandise so condemned, with the costs, judgment shall be granted upon the bond, on motion in open court, without further delay."

§ 2228. Special Bail in Suits for Duties or Penalties in States Where Imprisonment for Debt Not Abolished.

§ *942, R. S., Comp. Stat. 1901, p. 963, 1 F. S. A. 520, Rose's Code, § 1552.* "In all suits or prosecutions for the recovery of duties or pecuniary penalties prescribed by the laws of the United States, commenced in any state where, by the laws thereof, imprisonment for debt shall not have been abolished, the person against whom process is issued shall be held to special bail, subject to the rules which prevail in civil suits in which special bail is required."

§ 2229. Committing Defendant Who has Given Bail in Another District.

§ *943, R. S., Comp. Stat. 1901, p. 693, 1 F. S. A. 520, Rose's Code, § 1553.* "When a defendant who has procured bail to respond to the judgment in a suit in any court of the United States in any district is afterward arrested in any other district and is committed to a jail, the use of which had been ceded to the United States for the custody of prisoners, the judge of the court wherein the suit in which the defendant has so procured bail is depending, shall, at the request of the bail, order that such defendant be held in said jail, in the custody of the marshal of the district in which it is. The said marshal, upon the delivery of such order,

duly authenticated, shall receive such person into his custody, and thereupon be chargeable for an escape, and shall forthwith make a certificate, under his hand and seal of such commitment, and transmit the same to the court from which the order issued, and, if required, shall make and deliver to such bail or to his attorney a duplicate thereof. Upon the return of said certificate, the court which made the said order, or any judge thereof, may direct an exoneretur be entered upon the bailpiece, where special bail shall have been found, or otherwise discharge such bail."

§ 2230. Same—Holding Defendant until Final Judgment in First Suit.

§ *944, R. S., Comp. Stat. 1901, p. 694, 1 F. S. A. 520, Rose's Code,* § *1554.* "When a defendant is committed by virtue of the order provided in the preceding section, he shall, unless sooner discharged by law, be holden in jail until final judgment is rendered in the suit in which he procured bail as aforesaid, and sixty days thereafter, if such judgment is rendered against him, in order that he may be charged in execution, which may, in such cases, be directed to and served by the marshal in whose custody he is."

§ 2231. Calling Bail in Kentucky.

§ *946, R. S., Comp. Stat. 1901, p. 694, 1 F. S. A. 521, Rose's Code,* § *1556.* "When a bail bond is given for the appearance of any person to answer in the district or circuit court for the district of Kentucky, the clerk of such court shall call the party at the time he is bound to appear. If the party fails, the clerk shall enter such failure on his minutes, and on said entry judgment may afterward be made of record by the court; but if the party appears, the clerk shall take another bond, with sureties similar to the first, for further appearance at the next succeeding term of the court, and if the party fails to give such other bond and surety, he shall stand committed by order of the clerk until he complies."

§ 2232. Bail de Bene Esse by Clerks in Absence of Judges.

§ *947, R. S., Comp. Stat. 1901, p. 694, 1 F. S. A. 521, Rose's Code,* § *1557.* "Recognizances of special bail may be taken *de bene esse* by the clerks of the circuit and district

courts, in the absence or in case of the disability of the judges, in any action depending in either of the said courts, where special bail is demandable."

§ 2233. Property Taken under Revenue Laws Irrepleviable.

§ *934, R. S., Comp. Stat. 1901, p. 689, 6 F. S. A. 766, Rose's Code, §§ 1386, 1516.* "All property taken or detained by any officer or other person, under authority of any revenue law of the United States, shall be irrepleviable, and shall be deemed to be in the custody of the law and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof."

§ 2234. Credits Allowed in Government Suits against Individuals.

§ *951, R. S., Comp. Stat. 1901, p. 695, 2 F. S. A. 41, Rose's Code, § 1411.* "In suits brought by the United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been presented to the accounting officers of the Treasury, for their examination, and to have been by them disallowed, in whole or in part, unless it is proved to the satisfaction of the court that the defendant is, at the time of the trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting a claim for such credit at the Treasury by absence from the United States or by some unavoidable accident."

§ 2235. Credits Allowed in Government Suits under Postal Laws.

§ *952, R. S., Comp. Stat. 1901, p. 695, 2 F. S. A. 44, Rose's Code, § 1397.* "No claim shall be allowed upon the trial of any suit for delinquency against a postmaster, contractor, or other officer, agent, or employee of the Postoffice Department, unless the same has been presented to the sixth auditor and by him disallowed, in whole or in part, or unless it is proved to the satisfaction of the court that the defendant is, at the time of trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting to the said auditor a claim for such credit by some unavoidable accident."

§ 2236. Interest in Postal Suits on Balances Due.

§ *964, R. S., Comp. Stat. 1901, p. 700, 6 F. S. A. 12, Rose's Code,* § *1410.* "In all suits for balances due to the Postoffice Department, interest thereon shall be recovered, from the time of the default, at the rate of six per centum a year."

§ 2237. Sale after Condemnation under Revenue Laws.

§ *939, R. S., Comp. Stat. 1901, p. 691, 3 F. S. A. 98, Rose's Code,* §§ *1387, 1518.* "All vessels, goods, wares, or merchandise which shall be condemned by virtue of any law respecting the revenue from imports or tonnage, or the registering and recording, or the enrolling and licensing of vessels, and for which bonds shall not have been given by the claimant, shall be sold by the marshal or other proper officer of the court in which condemnation shall be had, to the highest bidder, at public auction, by order of such court, and at such place as the court may appoint, giving at least fifteen days' notice (except in cases of perishable merchandise) in one or more of the public newspapers of the place where such sale shall be; or if no paper is published in such place, in one or more of the papers published in the nearest place thereto; for which advertising, a sum not exceeding five dollars shall be paid. And the amount of such sales, deducting all proper charges, shall be paid within ten days after such sale by the person selling the same to the clerk or other proper officer of the court directing such sale, to be by him, after deducting the charges allowed by the court, paid to the collector of the district in which such seizure or forfeiture has taken place, as hereinbefore directed."

§ 2238. Paying Money into Court.

§ *995, R. S., Comp. Stat. 1901, p. 711, 5 F. S. A. 70, Rose's Code,* § *821.* "All moneys paid into any court of the United States, or received by the officers thereof, in any cause pending or adjudicated in such court, shall be forthwith deposited with the Treasurer, an assistant treasurer, or a designated depositary of the United States, in the name and to the credit of such court: *Provided,* That nothing herein shall be construed to prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court."

§ 2239. Withdrawal of Money Paid into Court.

§ *996, R. S., as Amended Act March 3, 1911, ch. 224, 36 Stat. at L. 1083, 1912 Supp. F. S. A. v. 1, p. 273.* "No money deposited as aforesaid shall be withdrawn except by order of the judge or judges of said court, respectively, in term or in vacation, to be signed by such judge or judges, and to be entered and certified of record by the clerk; and every such order shall state the cause in or on account of which it is drawn.

"In every case in which the right to withdraw money so deposited has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, it shall be the duty of the judge or judges of said court, or its successor, to cause such money to be deposited in the Treasury of the United States, in the name and to the credit of the United States: *Provided,* That any person or persons or any corporation or company entitled to any such money may, on petition to the court from which the money was received, or its successor, and upon notice to the United States attorney and full proof of right thereto, obtain an order of court directing the payment of such money to the claimant, and the money deposited as aforesaid shall constitute and be a permanent appropriation for payments in obedience to such orders, and this act is applicable to all money deposited in the Treasury of the United States in accordance with section nine hundred and ninety-six, Revised Statutes of the United States, as amended February nineteenth, eighteen hundred and ninety-seven."

§ 2240. Liens on Vessels for Repairs, Supplies, or Other Necessaries—Procedure in Rem.

§§ *1–5 Act June 23, 1910, ch. 373, 36 Stat. at L. 604, 605, Comp. St. 1911, p. 1192, 1912 Supp. F. S. A. v. 1, pp. 352–3.* § 1. "(Maritime lien on vessels for repairs, supplies, etc.) That any person furnishing repairs, supplies, or other necessaries, including the use of dry dock or marine railway, to a vessel, whether foreign or domestic, upon the order of the owner or owners of such vessel, or of a person by him or them authorized, shall have a maritime lien on the vessel which may be enforced by a proceeding *in rem,* and it shall not be necessary to allege or prove that credit was given to the vessel."

§ 2. "(Persons presumed to have authority.) That

the following persons shall be presumed to have authority from the owner or owners to procure repairs, supplies, and other necessaries for the vessel: The managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply is intrusted. No person tortiously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel."

§ 3. "(Charterers, etc.) That the officers and agents of a vessel specified in section two shall be taken to include such officers and agents when appointed by a charterer, by an owner *pro hac vice,* or by an agreed purchaser in possession of the vessel, but nothing in this act shall be construed to confer a lien when the furnisher knew, or by the exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessaries was without authority to bind the vessel therefor."

§ 4. "(Waiving lien—other proceedings not affected.) That nothing in this act shall be construed to prevent a furnisher of repairs, supplies, or other necessaries from waiving his right to a lien at any time, by agreement or otherwise, and this act shall not be construed to affect the rules of law now existing either in regard to the right to proceed against a vessel for advances or in regard to laches in the enforcement of liens on vessels, or in regard to the priority or rank of liens, or in regard to the right to proceed *in personam.*"

§ 5. "(State laws superseded.) That this act shall supersede the provisions of all state statutes conferring liens on vessels in so far as the same purport to create rights of action to be enforced by proceedings *in rem* against vessels for repairs, supplies, and other necessaries."

§ 2241. Oaths—Officers Authorized to Administer in Investigations.

§ 183, R. S., as Amended by Act Feb. 13, 1911, ch. 43, 36 Stat. at L. 898, Comp. St. 1911, p. 29, 1912 Supp. F. S. A. v. 1, p. 327. "Any officer or clerk of any of the departments lawfully detailed to investigate frauds on, or attempts to defraud, the government, or any irregularity or misconduct of any officer or agent of the United States, and any officer of the Army, Navy, Marine Corps, or Revenue-Cutter Service detailed to conduct an investigation, and the recorder,

and if there be none the presiding officer, of any military, naval, or revenue-cutter service board appointed for such purpose, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation."

§ 2242. Seizing and Detaining Letters, etc., Carried Contrary to Law.

§ *3990, R. S., Comp. Stat. 1901, p. 2715, 5 F. S. A. 909, Rose's Code,* § *661.* "Any special agent of the Postoffice Department, collector, or other customs officer, or United States marshal or his deputy, may at all times seize all letters and bags, packets or parcels, containing letters which are being carried contrary to law on board any vessel or on any post route, and convey the same to the nearest postoffice, or may, by the direction of the Postmaster General or Secretary of the Treasury, detain them until two months after the final determination of all suits and proceedings which may, at any time within six months after such seizure, be brought against any person for sending or carrying such letters."

§ 2243. Same—Disposition of Seizures.

§ *3991, R. S., Comp. Stat. 1901, p. 2715, 5 F. S. A. 909, Rose's Code,* § *661.* "Every package or parcel seized by any special agent of the Postoffice Department, collector, or other customs officer, or United States marshal or his deputies, in which any letter is unlawfully concealed, shall be forfeited to the United States, and the same proceedings may be had to enforce the forfeiture as are authorized in respect to goods, wares, and merchandise forfeited for violation of the revenue laws; and all laws for the benefit and protection of customs officers making seizures for violating revenue laws shall apply to officers making seizures for violating the postal laws."

§ 2244. Mandamus to Compel Obedience to Provisions of Interstate Commerce Act Respecting Securing Information Concerning Stocks, Bonds, and Other Securities.

Last part Act March 1, 1913, ch. 92, 37 Stat. at L. 703, amending "An Act to Regulate Commerce" by adding § *19a.*

"That the district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the commission, alleging a failure to comply with or a violation of any of the provisions of this section by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of this section."

CHAPTER 46.

COURT OF CUSTOMS APPEALS.

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§ 2250. In General. The court of customs appeals was established in 1909 to have appellate jurisdiction over matters decided by the board of general appraisers. This jurisdiction was exercised prior to 1909 by the circuit courts of the United States. An appeal lay to the circuit court of appeals and from there to the Supreme Court of the United States in cases provided. The court of customs appeals has superseded the jurisdiction of the circuit courts in these matters, and its judgment is final.

§ 2251. General Appraisers—Board of. There are nine general appraisers of merchandise, appointed by the President, by and with the consent of the Senate. They are employed at such ports as are designated by the Secretary of the Treasury. It is the duty of a general appraiser to revise and correct the reports of the assistant appraisers. He also must reappraise any merchandise when the collector deems the appraisement too low,

or when the importer, owner, agent, or consignee of the merchandise is dissatisfied with the appraisement. The decision of the appraiser, unless objection is made to it, is final and conclusive as to the dutiable value of such merchandise against all parties interested therein.

The board of general appraisers consists of three of the general appraisers, which are on duty at the port of New York. If the decision of the general appraiser as to the dutiable value of the merchandise is unsatisfactory to the importer, owner, consignee, or agent, or to the collector, and notice is given to the collector within two days after the decision of the general appraiser, the collector must transmit the invoice and all the papers appertaining thereto, to the board of general appraisers, at New York, or to a board of three general appraisers, at that port or any other port designated by the Secretary of the Treasury, who shall examine the case thus submitted, and decide it.

The general appraisers are judicial officers of the Treasury Department, and their duty is confined to examining the case submitted to them, and the single question involved is the dutiable value of the merchandise.

The general board of nine general appraisers establishes the rules of each of the three general boards.[1] By the act of October 3, 1913, ch. 16, section III., pt. subd. N., 38 Stat. at L. —, the determination of the board of general appraisers as to payment of duties shall be final "except in cases where an appeal shall be filed in the United States court of customs appeals within the time and manner provided by law."

§ 2252. Court of Customs Appeals—Organization—Rules.

§ 194, Judicial Code,[a] 36 Stat. at L. 1144, Comp. St. 1911, p. 211, 1912 Supp. F. S. A. v. 1, p. 213. "The said court of customs appeals shall be a court of record, with ju-

[1] Act of June 10, 1890, 26 Stat. at L. 136, pars. 12, 14, 15. Amended July 24, 1897, amended May 27, 1908. 35 Stat. at L. 403, 21 Op. Atty-Gen. 85; United States v. Loeb, 107 Fed. 692, 46 C. C. A. 562; 23 Op. Atty-Gen. 377; In re Muser, 49 Fed. 831; United States v. Newhall, 91 Fed. 525; United States v. Beebe, 103 Fed. 785; 117 Fed. 670.

[a] Drawn from § 28 of the Tariff Act of August 5, 1909, ch. 6, 36 Stat. at L. 105, 1909 Supp. F. S. A. 821.

risdiction as in this chapter established and limited. It shall prescribe the form and style of its seal, and the form of its writs and other process and procedure, and exercise such powers conferred by law as may be conformable and necessary to the exercise of its jurisdiction. It shall have power to establish all rules and regulations for the conduct of the business of the court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law. It shall have power to review any decision or matter within its jurisdiction, and may affirm, modify, or reverse the same and remand the case with such orders as may seem to it proper in the premises, which shall be executed accordingly."

§ 2253. Judges—Quorum.

§ *188, Judicial Code,*[b] *36 Stat. at L. 1143, Comp. St. 1911, p. 209, 1912 Supp. F. S. A. v. 1, p. 211.* "There shall be a United States court of customs appeals, which shall consist of a presiding judge and four associate judges, each of whom shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive a salary of seven thousand dollars a year. The presiding judge shall be so designated in the order of appointment and in the commission issued to him by the President; and the associate judges shall have precedence according to the date of their commissions. Any three members of said court shall constitute a quorum, and the concurrence of three members shall be necessary to any decision thereof. In case of a vacancy or of the temporary inability or disqualification, for any reason, of one or two of the judges of said court, the President may, upon the request of the presiding judge of said court, designate any qualified United States circuit or district judge or judges to act in his or their place; and such circuit or district judges shall be duly qualified to so act."

§ 2254. Clerks.

§ *191, Judicial Code,*[c] *36 Stat. at L. 1144, Comp. St. 1911, p. 210, 1912 Supp. F. S. A. v. 1, p. 212.* "The court shall appoint a clerk, whose office shall be in the city of Washington, District of Columbia, and who shall perform and exercise the same duties and powers in regard to all matters

[b] Drawn from Act of February 25, 1910, ch. 62, 36 Stat. at L. 214.
[c] Drawn from § 28 of the Tariff Act of August 5, 1909, ch. 6, 36 Stat. at L. 105, 1909 Supp. F. S. A. 821.

within the jurisdiction of said court as are now exercised and performed by the clerk of the Supreme Court of the United States, so far as the same may be applicable. The salary of the clerk shall be three thousand five hundred dollars per annum, which sum shall be in full payment for all service rendered by such clerk; and all fees of any kind whatever, and all costs shall be by him turned into the United States Treasury. Said clerk shall not be appointed by the court or any judge thereof as a commissioner, master, receiver, or referee. The costs and fees in the said court shall be fixed and established by said court in a table of fees to be adopted and approved by the Supreme Court of the United States within four months after the organization of said court: *Provided,* That the costs and fees so fixed shall not, with respect to any item, exceed the costs and fees charged in the Supreme Court of the United States; and the same shall be expended, accounted for, and paid over to the Treasury of the United States."

§ 2255. Assistant Clerks—Reports of Decisions.

§ *192, Judicial Code,*[d] *36 Stat. at L. 1144, Comp. St. 1911, p. 210, 1912 Supp. F. S. A. v. 1, p. 212.* "In addition to the clerk, the court may appoint an assistant clerk at a salary of two thousand dollars per annum, five stenographic clerks at a salary of one thousand six hundred dollars per annum each, one stenographic reporter at a salary of two thousand five hundred dollars per annum, and a messenger at a salary of eight hundred and forty dollars per annum, all payable in equal monthly instalments, and all of whom, including the clerk, shall hold office during the pleasure of and perform such duties as are assigned them by the court. Said reporter shall prepare and transmit to the Secretary of the Treasury once a week in time for publication in the Treasury Decisions copies of all decisions rendered to that date by said court, and prepare and transmit, under the direction of said court, at least once a year, reports of said decisions rendered to that date, constituting a volume, which shall be printed by the Treasury Department in such numbers and distributed or sold in such manner as the Secretary of the Treasury shall direct."

[d] Drawn from § 28 of the Tariff Act of August 5, 1909, ch. 6, 36 Stat. at L. 105, 1909 Supp. F. S. A. 821.

§ 2256. Marshal.

§ *190, Judicial Code,*[e] *36 Stat. at L. 1144, Comp. St. 1911, p. 210, 1912 Supp. F. S. A. v. 1, p. 212.* "Said court shall have the services of a marshal, with the same duties and powers, under the regulations of the court, as are now provided for the marshal of the Supreme Court of the United States, so far as the same may be applicable. Said services within the District of Columbia shall be performed by a marshal to be appointed by and to hold office during the pleasure of the court, who shall receive a salary of three thousand dollars per annum. Said services outside of the District of Columbia shall be performed by the United States marshals in and for the districts where sessions of said court may be held; and to this end said marshals shall be the marshals of said court. The marshal of said court, for the District of Columbia, is authorized to purchase, under the direction of the presiding judge, such books, periodicals, and stationery, as may be necessary for the use of said court; and such expenditures shall be allowed and paid by the Secretary of the Treasury upon claim duly made and approved by said presiding judge."

§ 2257. Rooms for Holding Court.

§ *193, Judicial Code,*[f] *36 Stat. at L. 1144, Comp. St. 1911, p. 211, 1912 Supp. F. S. A. v. 1, p. 213.* "The marshal of said court for the District of Columbia and the marshals of the several districts in which said court of customs appeals may be held shall, under the direction of the Attorney General, and with his approval, provide such rooms in the public buildings of the United States as may be necessary for said court: *Provided,* That in case proper rooms cannot be provided in such buildings, then the said marshals, with the approval of the Attorney General, may, from time to time, lease such rooms as may be necessary for said court. The bailiffs and messengers of said court shall be allowed the same compensation for their respective services as are allowed for similar services in the existing district courts. In no case shall said marshals secure other rooms than those regularly occupied by existing district courts, or other public

[e] Taken from § 28 of the Tariff Act of August 5, 1909, ch. 6, 36 Stat at L. 105, 1909 Supp. F. S. A. 821.

[f] Taken from § 28, of the Tariff Act of August 5, 1909, ch. 6, 36 Stat. at L. 105, 1909 Supp. F. S. A. 821.

officers, except where such cannot, by reason of actual occupancy or use, be occupied or used by said court of customs appeals."

§ 2258. Sessions.

§ *189, Judicial Code,*[g] *36 Stat. at L. 1143, Comp. St. 1911, p. 209, 1912 Supp. F. S. A. v. 1, p. 211.* "The said court of customs appeals shall always be open for the transaction of business, and sessions thereof may, in the discretion of the court, be held in the several judicial circuits and at such places as said court may from time to time designate. Any judge who, in pursuance of the provisions of this chapter, shall attend a session of said court at any place other than the city of Washington, shall be paid, upon his written and itemized certificate, by the marshal of the district in which the court shall be held, his actual and necessary expenses incurred for travel and attendance, and the actual and necessary expenses of one stenographic clerk who may accompany him; and such payments shall be allowed the marshal in the settlement of his accounts with the United States."

§ 2259. Jurisdiction.

§ *195, Judicial Code,*[h] *36 Stat. at L. 1145, Comp. St. 1911, p. 211, 1912 Supp. F. S. A. v. 1, p. 213.* "The court of customs appeals established by this chapter shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided, final decisions by a board of general appraisers in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classification, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of said board, and all appealable questions as to the laws and regulations governing the collection of the customs revenues; and the judgments and decrees of said court of customs appeals shall be final in all such cases."

[g] Taken from § 28 of the Tariff Act of August 5, 1909, ch. 6, 36 Stat. at L. 105, 1909 Supp. F. S. A. 821.

[h] Drawn from § 28 of the Tariff Act of August 5, 1909, ch. 6, 36 Stat. at L. 105, 1909 Supp. F. S. A. 821.

§ *197, Judicial Code,*[i] *36 Stat. at L. 1145, Comp. St. 1911, p. 212, 1912 Supp. F. S. A. v. 1, p. 214.* "Immediately upon the organization of the court of customs appeals, all cases within the jurisdiction of that court pending, and not submitted for decision in any of the United States circuit courts of appeals, United States circuit, territorial, or district courts, shall, with the record and samples therein, be certified by said courts to said court of customs appeals for further proceedings in accordance herewith: *Provided,* That where orders for the taking of further testimony before a referee have been made in any of such cases, the taking of such testimony shall be completed before such certification."

§ *196, Judicial Code,*[j] *36 Stat. at L. 1145, Comp. St. 1911, p. 212, 1912 Supp. F. S. A. v. 1, p. 214.* "After the organization of said court, no appeal shall be taken or allowed from any board of United States general appraisers to any other court, and no appellate jurisdiction shall thereafter be exercised or allowed by any other courts in cases decided by said board of United States general appraisers; but all appeals allowed by law from such board of general appraisers shall be subject to review only in the court of customs appeals hereby established, according to the provisions of this chapter: *Provided,* That nothing in this chapter shall be deemed to deprive the Supreme Court of the United States of jurisdiction to hear and determine all customs cases which have heretofore been certified to said court from the United States circuit courts of appeals on applications for writs of certiorari or otherwise, nor to review by writ of certiorari any customs case heretofore decided or now pending and hereafter decided by any circuit court of appeals, provided application for said writ be made within six months after August fifth, nineteen hundred and nine: *Provided further,* That all customs cases decided by a circuit or district court of the United States or a court of a territory of the United States prior to said date above mentioned, and which have not been removed from said courts by appeal or writ of error, and all such cases theretofore submitted for decision in said courts and remaining undecided, may be reviewed on appeal at the instance of either party by the United

[i] Drawn from § 28 of the Tariff Act of August 5, 1909, ch. 6, 36 Stat. at L. 105, 1909 Supp. F. S. A. 821.

[j] Drawn from § 28 of the Tariff Act of August 28, 1909, ch. 6, 36 Stat. at L. 105, 1909 Supp. F. S. A. 821.

States court of customs appeals, provided such appeal be taken within one year from the date of the entry of the order, judgment, or decrees sought to be reviewed."

§ 2260. Time for Appeal from Board of General Appraisers.

§ *198, Judicial Code,*[k] *36 Stat. at L. 1146, Comp. St. 1911, p. 212, 1912 Supp. F. S. A. v. 1, p. 214.* "If the importer, owner, consignee, or agent of any imported merchandise, or the collector or Secretary of the Treasury, shall be dissatisfied with the decision of the board of general appraisers as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, or with any other appealable decision of said board, they, or either of them, may, within sixty days next after the entry of such decree or judgment, and not afterwards, apply to the court of customs appeals for a review of the questions of law and fact involved in such decision: *Provided,* That in Alaska and in the insular and other outside possessions of the United States ninety days shall be allowed for making such application to the court of customs appeals. Such application shall be made by filing in the office of the clerk of said court a concise statement of errors of law and fact complained of; and a copy of such statement shall be served on the collector, or on the importer, owner, consignee, or agent, as the case may be. Thereupon the court shall immediately order the board of general appraisers to transmit to said court the record and evidence taken by them, together with the certified statement of the facts involved in the case and their decision thereon; and all the evidence taken by and before said board shall be competent evidence before said court of customs appeals. The decision of said court of customs appeals shall be final, and such cause shall be remanded to said board of general appraisers for further proceedings to be taken in pursuance of such determination."

§ 2261. Calendar.

§ *199, Judicial Code,*[l] *36 Stat. at L. 1146, Comp. St. 1911, p. 213, 1912 Supp. F. S. A. v. 1, p. 215.* "Imme-

[k] Drawn from § 28 of the Tariff Act of August 5, 1909, ch. 6, 36 Stat. at L. 105, 1909 Supp. F. S. A. 821.

[l] Drawn from § 28 of the Tariff Act of August 5, 1909, ch. 6, 36 Stat. at L. 105, 1909 Supp. F. S. A. 821.

diately upon receipt of any record transmitted to said court for determination the clerk thereof shall place the same upon the calendar for hearing and submission; and such calendar shall be called and all cases thereupon submitted, except for good cause shown, at least once every sixty days: *Provided,* That such calendar need not be called during the months of July and August of any year."

CHAPTER 47.

COURT OF CLAIMS.

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§ 2300. Organization—Judges.

§ *136, Judicial Code,*[a] *36 Stat. at L. 1135, Comp. St. 1911, p. 196, 1912 Supp. F. S. A. v. 1, p. 198.* "The court of claims, established by the act of February twenty-fourth, eighteen hundred and fifty-five, shall be continued. It shall consist of a chief justice and four judges, who shall be appointed by the President, by and with the advice and consent of the Senate, and hold their offices during good behavior. Each of them shall take an oath to support the Constitution of the United States, and to discharge faithfully the duties of his office. The chief justice shall be entitled to receive an annual salary of six thousand five hundred dollars, and each of the other judges an annual salary of six thousand dollars, payable monthly, from the Treasury."

A seal is provided under § 137, Judicial Code.[b] (See Appendix.)

§ 2301. Same—Officers.

Clerk, assistant, bailiff, messenger.

§ *139, Judicial Code,*[c] *36 Stat. at L. 1136, Comp. St. 1911, p. 197, 1912 Supp. F. S. A. v. 1, p. 199.* "The said court shall appoint a chief clerk, an assistant clerk, if deemed necessary, a bailiff, and a chief messenger. The clerks shall take an oath for the faithful discharge of their duties, and shall be under the direction of the court in the performance thereof; and for misconduct or incapacity they may be removed by it from office; but the court shall report such removals, with the cause thereof, to Congress, if in session, or if not, at the next session. The bailiff shall hold his office for a term of four years, unless sooner removed by the court for cause."

The *salaries* of these officers are provided in § 140, Judicial Code. (See Appendix.)

[a] Re-enacting § 1049, R. S., Rose's Code, §§ 222, 468, Foster's Fed. Prac. (4th ed.) p. 1682, Comp. St. 1901, p. 729, 2 F. S. A. 53, which section is repealed by § 297, Judicial Code.

[b] Re-enacting § 1050, R. S., Rose's Code, § 225, Comp. St. 1901, p. 729, 2 F. S. A. 53. In general, Taylor v. United States, 45 Fed. 531.

[c] Re-enacting § 1053, R. S., Rose's Code, §§ 228, 562, 684, Foster's Fed Prac. (4th ed.) p. 1684, Comp. St. 1901, p. 730, 2 F. S. A. 54, which section is repealed by § 297, Judicial Code.

The *bond* of assistant clerk is provided in § 141, Judicial Code. (See Appendix.)

§ 2302. Disqualification to Practise before.

§ *144, Judicial Code,*[d] *36 Stat. at L. 1136, Comp. St. 1911, p. 198, 1912 Supp. F. S. A. v. 1, p. 200.* "Whoever, being elected or appointed a Senator, member of or delegate to Congress, or a resident commissioner, shall, after his election or appointment, and either before or after he has qualified, and during his continuance in office, practise in the court of claims, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and shall, moreover, thereafter be incapable of holding any office of honor, trust, or profit under the government of the United States."

§ 2303. Maintenance of.

§ *142, Judicial Code,*[e] *36 Stat. at L. 1136, Comp. St. 1911, p. 197, 1912 Supp. F. S. A. v. 1, p. 199.* "The said clerk shall have authority when he has given bond as provided in the preceding section (§ 141 in Appendix) to disburse, under the direction of the court, the contingent fund which may from time to time be appropriated for its use; and his accounts shall be settled by the proper accounting officers of the Treasury in the same way as the accounts of other disbursing agents of the government are settled."

§ 2304. Sessions—Quorum.

§ *138, Judicial Code,*[f] *36 Stat. at L. 1136, Comp. St. 1911, p. 197, 1912 Supp. F. S. A. v. 1, pp. 198–9.* "The court of claims shall hold one annual session at the city of Washington, beginning on the first Monday in December and continuing as long as may be necessary for the prompt disposition of the business of the court. Any three of the judges

[d] Re-enacting § 1058, R. S., Rose's Code, § 498, Comp. St. 1901, p. 731, 2 F. S. A. 55, which section is repealed by § 297, Judicial Code. Officer of court, compensation, etc., Burton v. United States, 202 U. S. 344, 50 L. ed. 1057, 26 Sup. Ct. Rep. 688, 6 Ann. Cas. 362.

[e] Re-enacting § 1056, R. S., Rose's Code, § 594, Comp. St. 1901, p. 731, 2 F. S. A. 54, which section is repealed by § 297, Judicial Code.

[f] Re-enacting § 1052, R. S., Rose's Code, § 308, Comp. St. 1901, p. 730, 2 F. S. A. 54, as amended by 18 Stat. at L. 468, which section is repealed by § 297, Judicial Code. As to quorum, sessions, Belknap v. United States, 150 U. S. 588, 37 L. ed. 1191, 14 Sup. Ct. Rep. 183.

of said court shall constitute a quorum, and may hold a court for the transaction of business: *Provided,* That the concurrence of three judges shall be necessary to the decision of any case."

§ 2305. Jurisdiction of Claims against the Government—Exceptions.

§ *145, Judicial Code,*[x] *36 Stat. at L. 1136, Comp. St. 1911, p. 198, 1912 Supp. F. S. A. v. 1, p. 200.* "The court of claims shall have jurisdiction to hear and determine the following matters:

"First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with the government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however,* That nothing in this section shall be construed as giving to the said court jurisdiction to hear and determine claims growing out of the late Civil War, and commonly known as 'war claims,' or to hear and determine other claims which, prior to March third, eighteen hundred and eighty-seven, had been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same.

"Second. All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the government of the United States against any claimant against the government in said court: *Provided,* That no suit against the government of the United States, brought by any officer of the United States to recover fees for services alleged to have been performed for the United States, shall be allowed under this chapter until an account for said fees shall have been rendered and finally acted upon as required by law, unless the proper accounting officer of the Treasury fails to act finally thereon within six months after the account is received in said office.

[x] Including §§ 1059, 1069, R. S., Rose's Code, §§ 231, 874, Foster's Fed. Prac. (4th ed.) pp. 1685, 1694, 1703, Comp. St. 1901, p. 752, 2 F. S. A. 55, 65, and Act of March 3, 1887, ch. 359, sec. 1, 24 Stat. at L. 505, Comp. St. 1901, p. 736, 2 F. S. A. 80, all of which are repealed by § 297, Judicial Code. As to jurisdiction, United States v. Buffalo Pitts Co. 193 Fed. 905, 114 C. C. A. 119.

"Third. The claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer of the United States, or of his administrators or executors, for relief from responsibility on account of loss by capture or otherwise, while in the line of his duty, of government funds, vouchers, records, or papers in his charge, and for which such officer was and is held responsible."

§ 2306. Jurisdiction—Restrictions of—Foreign and Indian Treaties—Claims Pending Elsewhere.

Treaties with foreign nations and Indian tribes.

§ *153, Judicial Code,*[h] *36 Stat. at L. 1138, Comp. St. 1911, p. 201, 1912 Supp. F. S. A. v. 1, p. 204.* "The jurisdiction of the said court shall not extend to any claim against the government not pending therein on December first, eighteen hundred and sixty-two, growing out of or dependent on any treaty stipulation entered into with foreign nations or with the Indian tribes."

Claims pending elsewhere.

§ *154, Judicial Code,*[i] *36 Stat. at L. 1138, Comp. St. 1911, p. 201, 1912 Supp. F. S. A. v. 1, p. 204.* "No person shall file or prosecute in the court of claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States."

§ 2307. Jurisdiction—Claims of Aliens.

§ *155, Judicial Code,*[j] *36 Stat. at L. 1139, Comp. St. 1911, p. 201, 1912 Supp. F. S. A. v. 1, p. 204.* "Aliens who

[h] Re-enacting § 1066, R. S., Rose's Code, § 242, Foster's Fed. Prac. (4th ed.) p. 1693, Comp. St. p. 739, 2 F. S. A. 64, which section is repealed by § 297, Judicial Code. In general, Pam-To-Pee v. United States, 148 U. S. 691, 37 L. ed. 613, 13 Sup. Ct. Rep. 742.

[i] Re-enacting § 1067, R. S., Rose's Code, § 246, Comp. St. 1901, p. 739, 2 F. S. A. 64, which section is repealed by § 297, Judicial Code. In general, United States v. Louisiana, 123 U. S. 32, 31 L. ed. 69, 8 Sup. Ct. Rep. 17.

[j] Re-enacting § 1068, R. S., Rose's Code, § 1454, Foster's Fed. Prac. (4th ed.) pp. 1694, 1702. Comp. St. 1901, p. 740, 2 F. S. A. 64, which section is repealed by § 297, Judicial Code. Aliens, United States v. Winchester & Potomac Railroad Co. 163 U. S. 244, 41 L. ed. 145, 16 Sup. Ct. Rep. 993.

are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts, shall have the privilege of prosecuting claims against the United States in the court of claims, whereof such court, by reason of their subject-matter and character, might take jurisdiction."

§ 2308. Jurisdiction—Claims for Proceeds of Abandoned Property.

§ *162, Judicial Code,*[k] *36 Stat. at L. 1139, Comp. St. 1911, p. 203, 1912 Supp. F. S. A. v. 1, p. 205.* "The court of claims shall have jurisdiction to hear and determine the claims of those whose property was taken subsequent to June the first, eighteen hundred and sixty-five, under the provisions of the act of Congress approved March twelfth, eighteen hundred and sixty-three, entitled, 'An Act to Provide for the Collection of Abandoned Property and for the Prevention of Frauds in Insurrectionary Districts within the United States,' and acts amendatory thereof, where the property so taken was sold and the net proceeds thereof were placed in the Treasury of the United States; and the Secretary of the Treasury shall return said net proceeds to the owners thereof, on the judgment of said court, and full jurisdiction is given to said court to adjudge said claims, any statutes of limitations to the contrary notwithstanding."

§ 2309. Jurisdiction—Claims Referred by Departments.

§ *148, Judicial Code,*[l] *36 Stat. at L. 1137, Comp. St. 1911, p. 199, 1912 Supp. F. S. A. v. 1, p. 202.* "When any claim or matter is pending in any of the executive departments which involves controverted questions of fact or law, the head of such department may transmit the same, with the vouchers, papers, documents, and proofs pertaining thereto, to the court of claims, and the same shall be there

[k] Drawn from § 1059, R. S., Rose's Code, § 233, Foster's Fed. Prac. (4th ed.) pp. 1685, 1694, Comp. St. 1901, p. 735, 2 F. S. A. 60, which section is repealed by § 297, Judicial Code. In general, Austin v. United States, 155 U. S. 417, 39 L. ed. 206, 15 Sup. Ct. Rep. 167.

[l] Drawn from § 1063, R. S., Rose's Code, § 236, Foster's Fed. Prac. (4th ed.) pp. 1400, 1687, Comp. St. 1901, p. 738, 2 F. S. A. 62, §§ 12 & 13 of act of March 3, 1887, ch. 359, 24 Stat. at L. 507, Rose's Code, §§ 237, 239, Comp. St. 1901, p. 748, 2 F. S. A. 86, and § 2 of act of March 3, 1883, ch. 116, 22 Stat. at L. 485, Rose's Code, § 238, 2 F. S. A. 77, Comp. St. 1901, p. 756, all of which are repealed by § 297, Judicial Code. In general, United States v. Barlow, 184 U. S. 123, 46 L. ed. 463, 22 Sup. Ct. Rep. 468.

proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found, the court shall report its findings to the department by which it was transmitted for its guidance and action: *Provided, however,* That it shall have been transmitted with the consent of the claimant, or if it shall appear to the satisfaction of the court upon the facts established, that under existing laws or the provisions of this chapter it has jurisdiction to render judgment or decree thereon, it shall proceed to do so, in the latter case giving to either party such further opportunity for hearing as in its judgment justice shall require, and shall report its findings therein to the department by which the same was referred to said court. The Secretary of the Treasury may, upon the certificate of any auditor, or of the Comptroller of the Treasury, direct any claim or matter, of which, by reason of the subject-matter or character, the said court might under existing laws, take jurisdiction on the voluntary action of the claimant, to be transmitted, with all the vouchers, papers, documents, and proofs pertaining thereto, to the said court for trial and adjudication."

§ *149, Judicial Code,*[m] *36 Stat. at L. 1138, Comp. St. 1911, p. 200, 1912 Supp. F. S. A. v. 1, p. 202.* "All cases transmitted by the head of any department, or upon the certificate of any auditor, or of the Comptroller of the Treasury, according to the provisions of the preceding section, shall be proceeded in as other cases pending in the court of claims, and shall, in all respects, be subject to the same rules and regulations."

§ 2310. Jurisdiction—Claims Referred by Congress.

§ *151, Judicial Code,*[n] *36 Stat. at L. 1138, Comp. St. 1911, p. 200, 1912 Supp. F. S. A. v. 1, p. 202.* "Whenever any bill, except for a pension, is pending in either House of Congress providing for the payment of a claim against

[m] Re-enacting § 1064, R. S., Rose's Code, § 1452, Foster's Fed. Prac. (4th ed.) p. 1687, Comp. St. 1901, p. 738, 2 F. S. A. 63, which section is repealed by § 297, Judicial Code. Procedure in referred cases, United States v. New York, 160 U. S. 598, 40 L. ed. 551, 16 Sup. Ct. Rep. 402.

[n] Re-enacting act of March 3, 1887, ch. 359, § 14, 24 Stat. at L. 507, Rose's Code, § 240, Foster's Fed. Prac. (4th ed.) p. 287, Comp. St. 1901, p. 757, 2 F. S. A. 87, as amended by act of June 25, 1910, 36 Stat. at L. 409, which is repealed by § 297, Judicial Code.

the United States, legal or equitable, or for a grant, gift, or bounty to any person, the House in which such bill is pending may, for the investigation and determination of facts, refer the same to the court of claims, which shall proceed with the same in accordance with such rules as it may adopt, and report to such House the facts in the case and the amount, where the same can be liquidated, including any facts bearing upon the question whether there has been delay or laches in presenting such claim or applying for such grant, gift, or bounty, and any facts bearing upon the question whether the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy, together with such conclusions as shall be sufficient to inform Congress of the nature and character of the demand, either as a claim, legal or equitable, or as a gratuity against the United States, and the amount, if any, legally or equitably due from the United States to the claimant: *Provided, however,* That if it shall appear to the satisfaction of the court upon the facts established, that under existing laws or the provisions of this chapter, the subject-matter of the bill is such that it has jurisdiction to render judgment or decree thereon, it shall proceed to do so, giving to either party such further opportunity for hearing as in its judgment justice shall require, and it shall report its proceedings therein to the House of Congress by which the same was referred to said court."

§ 2311. Jurisdiction—Settlement Indebtedness Due Government.

§ 180, Judicial Code, 36 Stat. at L. 1141, Comp. St. 1911, p. 206, 1912 Supp. F. S. A. v. 1, p. 208.* "Whenever any person shall present his petition to the court of claims, alleging that he is or has been indebted to the United States as an officer or agent thereof, or by virtue of any contract therewith, or that he is the guarantor, or surety, or personal representative of any officer or agent or contractor so indebted, or that he or the person for whom he is such surety, guarantor, or personal representative has held any office or

* Drawn from §§ 3 and 8 of the Tucker Act of March 3, 1887, ch. 359, Rose's Code, §§ 139, 242, 1481, 1486, Comp. St. 1901, pp. 754, 755, 2 F. S. A. 83, 85, which sections are repealed by § 297, Judicial Code.
Gierding v. United States, 26 Ct. Cl. 319.

agency under the United States, or entered into any contract therewith, under which it may be or has been claimed that an indebtedness to the United States had arisen and exists, and that he or the person he represents has applied to the proper department of the government requesting that the account of such office, agency, or indebtedness may be adjusted and settled, and that three years have elapsed from the date of such application, and said account still remains unsettled and unadjusted, and that no suit upon the same has been brought by the United States, said court shall, due notice first being given to the head of said department and to the Attorney General of the United States, proceed to hear the parties and to ascertain the amount, if any, due the United States on said account. The Attorney General shall represent the United States at the hearing of said cause. The court may postpone the same from time to time whenever justice shall require. The judgment of said court or of the Supreme Court of the United States, to which an appeal shall lie, as in other cases, as to the amount due, shall be binding and conclusive upon the parties. The payment of such amount so found due by the court shall discharge such obligation. An action shall accrue to the United States against such principal or surety or representative to recover the amount so found due, which may be brought at any time within three years after the final judgment of said court; and unless suit shall be brought within said time, such claim and the claim on the original indebtedness shall be forever barred. The provisions of section one hundred and sixty-six (§ 2322 infra) shall apply to cases under this section."

§ 2312. Jurisdiction—Claims by Aided Railroad Companies for Transportation Furnished to the Government.

§ *5261, R. S., Comp. Stat. 1901, p. 3526, 6 F. S. A. 747; Rose's Code, § 244.* "Any railroad company to which bonds have been issued, on which the interest has not been paid may bring suit in the court of claims to recover the price of such freight and transportation, and in such suit the right of such company to recover the same upon the law and the facts of the case shall be determined, and also the rights of the United States upon the merits of all the points presented by it in answer thereto by them; and either party to such

suit may appeal to the Supreme Court; and both said courts shall give such cause or causes precedence of all other business."

§ 2313. Jurisdiction in Patent Cases for Unlicensed Use by Government.

Act June 25, 1910, ch. 423, 36 Stat. at L. p. 851, Comp. St. 1911, p. 1457, 1912 Supp. F. S. A. v. 1, p. 286. "That whenever an invention described in and covered by a patent of the United States shall hereafter be used by the United States without license of the owner thereof or lawful right to use the same, such owner may recover reasonable compensation for such use by suit in the court of claims: *Provided, however,* That said court of claims shall not entertain a suit or award compensation under the provisions of this act where the claim for compensation is based on the use by the United States of any article heretofore owned, leased, used by, or in the possession of the United States: *Provided further,* That in any such suit the United States may avail itself of any and all defenses, general or special, which might be pleaded by a defendant in an action for infringement, as set forth in title sixty of the Revised Statutes, or otherwise: *And provided further,* That the benefits of this act shall not inure to any patentee who, when he makes such claim, is in the employment or service of the government of the United States; or the assignee of any such patentee; nor shall this act apply to any device discovered or invented by such employee during the time of his employment or service."

§ 2314. Statute of Limitations.

§ *156, Judicial Code,*[p] *36 Stat. at L. 1139, Comp. St. 1911, p. 202, 1912 Supp. F. S. A. v. 1, p. 204.* "Every claim against the United States cognizable by the court of claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the secretary of the Senate or the clerk of the House of Representatives, as provided by law, within six years after the claim first accrues: *Provided,* That the claims of married women, first accrued during marriage, of per-

[p] For Annotation of this § 156, Judicial Code, see footnote [n], ante, our § 403.

sons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively."

§ 2315. Rules of Practice.

§ *157, Judicial Code,*[q] *36 Stat. at L. 1139, Comp. St. 1911, p. 202, 1912 Supp. F. S. A. v. 1, p. 204.* "The said court shall have power to establish rules for its government and for the regulation of practice therein, and it may punish for contempt in the manner prescribed by the common law, may appoint commissioners, and may exercise such powers as are necessary to carry into effect the powers granted to it by law."

The court of claims has established elaborate rules for their practice. There is not space to include them in this work. They may be obtained by writing the clerk at Washington, D. C.

§ 2316. The Petition.

§ *159, Judicial Code,*[r] *36 Stat. at L. 1139, Comp. St. 1911, p. 202, 1912 Supp. F. S. A. v. 1, p. 204.* "The claimant shall in all cases fully set forth in his petition the claim, the action thereon in Congress or by any of the departments, if such action has been had, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of said claim or of any part thereof or interest therein has been made, except as stated in the petition; that said claimant is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets; that the claimant and, where the claim has been

[q] Re-enacting § 1070, R. S., Rose's Code, §§ 224, 808, Comp. St. 1901, p. 740, 2 F. S. A. 67, which section is repealed by § 297, Judicial Code. Practice, Intermingled Cotton Cases, 92 U. S. 651, 23 L. ed. 756.

[r] Re-enacting § 1072, R. S., Rose's Code, § 1455, Foster's Fed. Prac. (4th ed.) pp. 286, 1705, Comp. St. 1901, p. 741, 2 F. S. A. 67, which section is repealed by § 297, Judicial Code. In general, United States v. Louisiana, 123 U. S. 32, 31 L. ed. 69, 8 Sup. Ct. Rep. 17.

assigned, the original and every prior owner thereof, if a citizen, has at all times borne true allegiance to the government of the United States, and, whether a citizen or not, has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said government, and that he believes the facts as stated in the said petition to be true. The said petition shall be verified by the affidavit of the claimant, his agent or attorney."

§ *158, Judicial Code,*[s] *36 Stat. at L. 1139, Comp. St. 1911, p. 202, 1912 Supp. F. S. A. v. 1, p. 204.* "The judges and clerks of said court may administer oaths and affirmations, take acknowledgments of instruments in writing, and give certificates of the same."

§ *184, Judicial Code,*[t] *36 Stat. at L. 1142, Comp. St. 1911, p. 207, 1912 Supp. F. S. A. v. 1, p. 210.* "In any case of a claim for supplies or stores taken by or furnished to any part of the military or naval forces of the United States for their use during the late Civil War, the petition shall aver that the person who furnished such supplies or stores, or from whom such supplies or stores were taken, did not give any aid or comfort to said rebellion, but was throughout that war loyal to the government of the United States, and the fact of such loyalty shall be a jurisdictional fact; and unless the said court shall, on a preliminary inquiry, find that the person who furnished such supplies or stores, or from whom the same were taken as aforesaid, was loyal to the government of the United States throughout said war, the court shall not have jurisdiction of such cause, and the same shall, without further proceedings, be dismissed."

§ 2317. Defenses by Attorney General.

§ *185, Judicial Code,*[u] *36 Stat. at L. 1142, Comp. St.*

[s] Re-enacting § 1071, R. S., Rose's Code, § 223, Foster's Fed. Prac. (4th ed.) p. 1718, Comp. St. 1901, p. 741, 2 F. S. A. 67, which section is repealed by § 297, Judicial Code.

[t] Re-enacting § 4 of Bowman Act of March 3, 1883, ch. 116, Rose's Code, § 1476, Foster's Fed. Prac. (4th ed.) pp. 1688, 1689, 22 Stat. at L. 485, Comp. St. 1901, p. 749, 2 F. S. A. 79, which section is repealed by § 297, Judicial Code. For date when war ceased, see Carter v. United States, 23 Ct. Cl. 326; Lynch v. United States, 31 Ct. Cl. 62; Austin v. United States, 155 U. S. 417, 39 L. ed. 206, 15 Sup. Ct. Rep. 167; Loyalty, Austin v. United States, 155 U. S. 417, 39 L. ed. 206, 15 Sup. Ct. Rep. 167.

[u] Drawn from § 5 of the Bowman Act of March 3, 1883, ch. 116, Rose's Montg.—40.

1911, p. 208, 1912 Supp. F. S. A. v. 1, p. 210. "The Attorney General, or his assistants under his direction, shall appear for the defense and protection of the interests of the United States in all cases which may be transmitted to the court of claims under the provisions of this chapter, with the same power to interpose counterclaims, offsets, defenses for fraud practised or attempted to be practised by claimants, and other defenses, in like manner as he is required to defend the United States in said court."

Claiming more than due under Act June 16, 1874.

§ 173, Judicial Code,[v] *36 Stat. at L. 1141, Comp. St. 1911, p. 205, 1912 Supp. F. S. A. v. 1, p. 207.* "No claim shall be allowed by the accounting officers under the provisions of the act of Congress approved June sixteenth, eighteen hundred and seventy-four, or by the court of claims, or by Congress, to any person where such claimant, or those under whom he claims, shall wilfully, knowingly, and with intent to defraud the United States, have claimed more than was justly due in respect of such claim, or presented any false evidence to Congress, or to any department or court, in support thereof."

Corrupt or fraudulent practices.

§ 172, Judicial Code,[w] *36 Stat. at L. 1141, Comp. St. 1911, p. 205, 1912 Supp. F. S. A. v. 1, p. 207.* "Any person who corruptly practises or attempts to practise any fraud against the United States in the proof, statement, establishment, or allowance of any claim or of any part of any claim against the United States, shall *ipso facto* forfeit the same to the government; and it shall be the duty of the court of claims, in such cases, to find specifically that such fraud was practised or attempted to be practised, and thereupon to give judgment that such claim is forfeited to the government, and that the claimant be forever barred from prosecuting the same."

Code, § 1477, 22 Stat. at L. 486, Comp. St. 1901, p. 749, 2 F. S. A. 79, which section is repealed by § 297, Judicial Code.

[v] Re-enacting § 2 of act of April 30, 1878, ch. 77, 20 Stat. at L. 524, Comp. St. 1901, p. 178, 2 F. S. A. 19.

Fraud in part of claim is ground for forfeiture. Furray v. United States, 34 Ct. Cl. 171.

For form of judgment of forfeiture see, Bellocque, etc., Co.'s Case, 16 Ct. Cl. 620.

[w] For Annotation of this § 172, Judicial Code, see footnote [f], ante, our § 2012.

§ 2318. Insufficient Petition.

§ *165, Judicial Code,*[x] *36 Stat. at L. 1140, Comp. St. 1911, p. 204, 1912 Supp. F. S. A. v. 1, p. 206.* "When it appears to the court in any case that the facts set forth in the petition of the claimant do not furnish any ground for relief, it shall not authorize the taking of any testimony therein."

§ 2319. Traverse.

§ *160, Judicial Code,*[xx] *36 Stat. at L. 1139, Comp. St. 1911, p. 203, 1912 F. S. A. v. 1, p. 205.* "The said allegations as to true allegiance and voluntary aiding, abetting, or giving encouragement to rebellion against the government may be traversed by the government, and if on the trial such issues shall be decided against the claimant, his petition shall be dismissed."

§ 2320. Burden of Proof.

§ *161, Judicial Code,*[y] *36 Stat. at L. 1139, Comp. St. 1911, p. 203, 1912 Supp. F. S. A. v. 1, p. 205.* "Whenever it is material in any claim to ascertain whether any person did or did not give any aid or comfort to forces or government of the late Confederate States during the Civil War, the claimant asserting the loyalty of any such person to the United States during such Civil War shall be required to prove affirmatively that such person did, during said Civil War, consistently adhere to the United States and did give no aid or comfort to persons engaged in said Confederate service in said Civil War."

§ 2321. Testimony Taken before Commissioners. The method of taking testimony to be used before the court of claims is by commission.

§ *163, Judicial Code,*[z] *36 Stat. at L. 1140, Comp. St. 1911, p. 203, 1912 Supp. F. S. A. v. 1, p. 205.* "The court

[x] Re-enacting § 1077, R. S., Rose's Code, § 1460, Comp. St. 1901, p. 742, 2 F. S. A. 69, which section is repealed by § 297, Judicial Code.

[xx] Re-enacting § 1073, R. S., Rose's Code, § 1456, Comp. St. 1901, p. 741, 2 F. S. A. 68, which is repealed by § 297, Judicial Code.

[y] Re-enacting part of § 1074, R. S., Rose's Code, § 1457, Foster's Fed. Prac. (4th ed.) p. 1718, Comp. St. 1901, p. 742, 2 F. S. A. 68, which section is repealed by § 297, Judicial Code.

[z] Re-enacting § 1075, R. S., Rose's Code, § 1458, Comp. St. 1901, p. 742, 2 F. S. A. 68, which section is repealed by § 297, Judicial Code.

of claims shall have power to appoint commissioners to take testimony to be used in the investigation of claims which come before it, to prescribe the fees which they shall receive for their services, and to issue commissions for the taking of such testimony, whether taken at the instance of the claimant or of the United States."

§ *167, Judicial Code,*[a] *36 Stat. at L. 1140, Comp. St. 1911, p. 204, 1912 Supp. F. S. A. v. 1, p. 206.* "The testimony in cases pending before the court of claims shall be taken in the county where the witness resides, when the same can be conveniently done."

§ *168, Judicial Code,*[b] *36 Stat. at L. 1140, Comp. St. 1911, p. 204, 1912 Supp. F. S. A. v. 1, p. 206.* "The court of claims may issue subpœnas to require the attendance of witnesses in order to be examined before any person commissioned to take testimony therein. Such subpœnas shall have the same force as if issued from a district court, and compliance therewith shall be compelled under such rules and orders as the court shall establish."

§ *170, Judicial Code,*[c] *36 Stat. at L. 1140, Comp. St. 1911, p. 205, 1912 Supp. F. S. A. v. 1, p. 207.* "The commissioner taking testimony to be used in the court of claims shall administer an oath or affirmation to the witness brought before him for examination."

§ 2322. Examination of Claimant.

§ *166, Judicial Code,*[d] *36 Stat. at L. 1140, Comp. St. 1911, p. 204, 1912 Supp. F. S. A. v. 1, p. 206.* "The court may, at the instance of the attorney or solicitor appearing in behalf of the United States, make an order in any case pending therein, directing any claimant in such case to ap-

[a] Re-enacting § 1081, R. S., Rose's Code, § 1463, Foster's Fed. Prac. (4th ed.) p. 1720, Comp. St. 1901, p. 743, 2 F. S. A. 70, which section is repealed by § 297, Judicial Code.

[b] Re-enacting § 1082, R. S., Rose's Code, § 1464, Comp. St. 1901, p. 744, 2 F. S. A. 70, which is repealed by § 297, Judicial Code.

[c] Re-enacting § 1084, R. S., Rose's Code, § 1466, Comp. St. 1901, p. 744, 2 F. S. A. 71, which section is repealed by § 297, Judicial Code.

[d] Re-enacting § 1080, R. S., Rose's Code, § 1462, Foster's Fed. Prac. (4th ed.) p. 1719, Comp. St. 1901, p. 743, 2 F. S. A. 70, which section is repealed by § 297, Judicial Code. In general United States v. Greathouse, 166 U. S. 601, 41 L. ed. 1130, 17 Sup. Ct. Rep. 701.

pear, upon reasonable notice, before any commissioner of the court and be examined on oath touching any or all matters pertaining to said claim. Such examination shall be reduced to writing by the said commissioner, and be returned to and filed in the court, and may, at the discretion of the attorney or solicitor of the United States appearing in the case, be read and used as evidence on the trial thereof. And if any claimant, after such order is made and due and reasonable notice is given to him, fails to appear, or refuses to testify or answer fully as to all matters within his knowledge material to the issue, the court may, in its discretion, order that the said cause shall not be brought forward for trial until he shall have fully complied with the order of the court in the premises."

§ 2323. Evidence from Departments and Congress.

§ *164, Judicial Code,*[e] *36 Stat. at L. 1140, Comp. St. 1911, p. 204, 1912 Supp. F. S. A. v. 1, p. 205.* "The said court shall have power to call upon any of the departments for any information or papers it may deem necessary, and shall have the use of all recorded and printed reports made by the committees of each House of Congress, when deemed necessary in the prosecution of its business. But the head of any department may refuse and omit to comply with any call for information or papers when, in his opinion, such compliance would be injurious to the public interest."

§ 2324. Witnesses.

Competency.

§ *186, Judicial Code,*[f] *36 Stat. at L. 1143, Comp. St. 1911, p. 208, 1912 Supp. F. S. A. v. 1, 210, as amended Act Feb. 5, 1912, ch. 28, 37 Stat. at L. 61.* "No person shall be excluded as a witness in the court of claims on account of color or because he or she is a party to or interested in the cause or proceeding; and any plaintiff or party in

[e] Re-enacting § 1076, R. S., Rose's Code, § 1459, Comp. St. 1901, p. 742, 2 F. S. A. 69, which section is repealed by § 297, Judicial Code. In general, Oakes v. United States, 174 U. S. 778, 43 L. ed. 1169, 19 Sup. Ct. Rep. 864.

[f] Combining § 1087, R. S., Rose's Code, § 1461, Foster's Fed. Prac. (4th ed.) p. 1720, Comp. St. 1901, p. 743, 2 F. S. A. 69; § 6 of the Bowman act of March 3, 1883, ch. 116, Rose's Code, § 1478, 22 Stat. at L. 486, Comp. St. 1901, p. 749, 2 F. S. A. 79; and § 8 of the Tucker act of March 3, 1887, ch. 359, 24 Stat. at L. 506, Comp. St. 1901, p. 73, 2 F. S. A. 85, all of which sections are repealed by § 297, Judicial Code.

interest may be examined as a witness on the part of the government."

Cross-examination.

§ *169, Judicial Code,*[g] *36 Stat. at L. 1140, Comp. St. 1911, p. 204, 1912 Supp. F. S. A. v. 1, p. 206.* "In taking testimony to be used in support of any claim, opportunity shall be given to the United States to file interrogatories, or by attorney to examine witnesses, under such regulations as said court shall prescribe; and like opportunity shall be afforded the claimant, in cases where testimony is taken on behalf of the United States, under like regulations."

§ 2325. New Trial.

On motion of claimant.

§ *174, Judicial Code,*[h] *36 Stat. at L. 1141, Comp. St. 1911, p. 205, 1912 Supp. F. S. A. v. 1, p. 207.* "When judgment is rendered against any claimant the court may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial."

On motion of United States.

§ *175, Judicial Code,*[i] *36 Stat. at L. 1141, Comp. St. 1911, p. 205, 1912 Supp. F. S. A. v. 1, p. 207.* "The court of claims, at any time while any claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, may, on motion, on behalf of the United States, grant a new trial and stay the payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States; but until an order is made staying the payment of a judgment, the same shall be payable and paid as now provided by law."

[g] Re-enacting § 1083, R. S., Rose's Code, § 1465, Comp. St. 1901, p. 744, 2 F. S. A. 71, which section is repealed by § 297, Judicial Code.

[h] Re-enacting § 1087, R. S., Rose's Code, § 1469, Foster's Fed. Prac. (4th ed.) p. 1733, Comp. St. 1901, p. 745, 2 F. S. A. 71, which section is repealed by § 297, Judicial Code. Nance v. United States, 23 Ct. Cl. 463; Payan's Motion, 15 Ct. Cl. 56.

[i] Re-enacting § 1088, R. S., Rose's Code, § 1470, Comp. St. 1901, p. 745, 2 F. S. A. 72, which section is repealed by § 297, Judicial Code. In General, Sanderson v. United States, 210 U. S. 168, 42 L. ed. 1007, 28 Sup. Ct. Rep.

§ 2326. Interest.

On accounts of disbursing officers.

§ *147, Judicial Code,*[j] *36 Stat. at L. 1137, Comp. St. 1911, p. 199, 1912 Supp. F. S. A. v. 1, p. 201.* "Whenever the court of claims ascertains the facts of any loss by any paymaster, quartermaster, commissary of subsistence, or other disbursing officer, in the cases hereinbefore provided, to have been without fault or negligence on the part of such officer, it shall make a decree setting forth the amount thereof, and upon such decree the proper accounting officers of the Treasury shall allow to such officer the amount so decreed as a credit in the settlement of his accounts."

§ *177, Judicial Code,*[k] *36 Stat. at L. 1141, Comp. St. 1911, p. 206, 1912 Supp. F. S. A. v. 1, p. 207.* "No interest shall be allowed on any claim up to the time of the rendition of judgment thereon by the court of claims, unless upon a contract expressly stipulating for the payment of interest."

§ 2327. Costs.

Fees of commissioner.

§ *171, Judicial Code,*[l] *36 Stat. at L. 1141, Comp. St. 1911, p. 205, 1912 Supp. F. S. A. v. 1, p. 207.* "When testimony is taken for the claimant, the fees of the commissioner before whom it is taken, and the cost of the commission and notice, shall be paid by such claimant; and when it is taken at the instance of the government, such fees shall be paid out of the contingent fund provided for the court of claims, or other appropriation made by Congress for that purpose."

661; Henry's Motion, 15 Ct. Cl. 166; McCollum v. United States, 33 Ct. Cl. 469; United States v. Young, 94 U. S. 258, 24 L. ed. 153; United States v. Crussell, 12 Wall. 175, 20 L. ed. 384; Young v. United States, 95 U. S. 641, 24 L. ed. 467.

[j] Re-enacting § 1062, R. S., Rose's Code, § 1451, Comp. St. 1901, p. 737, 2 F. S. A. 61, which section is repealed by § 297, Judicial Code. In general, McClure v. United States, 116 U. S. 145, 29 L. ed. 572, 6 Sup. Ct. Rep. 321.

[k] Re-enacting § 1091, R. S., Rose's Code, § 1473, Foster's Fed. Prac. (4th ed.) pp. 287, 1737, Comp. St. 1901, p. 747, 2 F. S. A. 73, which section is repealed by § 287, Judicial Code. Rice v. United States, 21 Ct. Cl. 413, 122 U. S. 611, 30 L. ed. 793, 7 Sup. Ct. Rep. 1377; United States v. Blackfeather, 155 U. S. 180, 39 L. ed. 114, 15 Sup. Ct. Rep. 64; Harvey v. United States, 113 U. S. 243, 28 L. ed. 987, 5 Sup. Ct. Rep. 465; Marvin v. United States, 44 Fed. 405. In general, United States ex rel. Angerica v. Bayard, 127 U. S. 251, 32 L. ed. 159, 8 Sup. Ct. Rep. 1156.

[l] Re-enacting § 1085, R. S., Rose's Code, § 1467, Comp. St. 1901, p. 744, 2 F. S. A. 71, which section is repealed by § 297, Judicial Code.

Costs to prevailing party.

§ *152, Judicial Code,*[m] *36 Stat. at L. 1138, Comp. St. 1911, p. 201, 1912 Supp. F. S. A. v. 1, p. 203.* "If the government of the United States shall put in issue the right of the plaintiff to recover, the court may, in its discretion, allow costs to the prevailing party from the time of joining such issue. Such costs, however, shall include only what is actually incurred for witnesses, and for summoning the same, and fees paid to the clerk of the court."

Cost of printing record.

§ *176, Judicial Code,*[n] *36 Stat. at L. 1141, Comp. St. 1911, p. 206, 1912 Supp. F. S. A. v. 1, p. 208.* "There shall be taxed against the losing party in each and every cause pending in the court of claims the cost of printing the record in such case, which shall be collected, except when the judgment is against the United States, by the clerk of said court and paid into the Treasury of the United States."

§ 2328. Effect of Judgment.

Final judgment a bar.

§ *179, Judicial Code,*[o] *36 Stat. at L. 1141, Comp. St. 1911, p. 206, 1912 Supp. F. S. A. v. 1, p. 208.* "Any final judgment against the claimant on any claim prosecuted as provided in this chapter shall forever bar any further claim or demand against the United States arising out of the matters involved in the controversy."

Effect of payment.

§ *178, Judicial Code,*[p] *36 Stat. at L. 1141, Comp. St. 1911, p. 206, 1912 Supp. F. S. A. v. 1, p. 208.* "The pay-

[m] Re-enacting § 15, of act of March 3, 1889, ch. 359, 24 Stat. at L. 508, Foster's Fed. Prac. (4th ed.) pp. 287, 1035, Comp. St. 1901, p. 758, 2 F. S. A. 88, which section is repealed by § 297, Judicial Code. Costs, United States v. Harmon, 147 U. S. 268, 37 L. ed. 164, 13 Sup. Ct. Rep. 327.

[n] Drawn from act of March 3, 1877, ch. 105, Rose's Code, § 1849, Comp. St. 1901, 705, 2 F. S. A. 293.

Railroad Co. v. Collector, 96 U. S. 594, 24 L. ed. 825. In general, Railroad Co. v. Collector, 96 U. S. 594, 24 L. ed. 825.

[o] Re-enacting § 1092, R. S., Rose's Code, § 1474, Comp. St. 1901, p. 747, 2 F. S. A. 74, which section is repealed by § 297, Judicial Code.

Silvey's Case, 7 Ct. Cl. 305; Spicer's Case, 5 Ct. Cl. 34. Dismissal for want of jurisdiction is not a final judgment upon the merits so as to bar the claimant. Green v. United States, 18 Ct. Cl. 93. In general, United States v. O'Grady, 89 U. S. 641, 22 L. ed. 772.

[p] Re-enacting § 1092, R. S., Rose's Code, § 1474, Foster's Fed. Prac. (4th ed.) p. 1739, Comp. St. 1901, p. 747, 2 F. S. A. 74, which section is repealed by § 297, Judicial Code.

ment of the amount due by any judgment of the court of claims, and of any interest thereon allowed by law, as provided by law, shall be a full discharge to the United States of all claim and demand touching any of the matters involved in the controversy."

Method of payment.

§ *1089, R. S., Comp. Stat. 1901, p. 745, 2 F. S. A. 73, Rose's Code,* § *1471.* "In all cases of final judgments by the court of claims, or, on appeal, by the Supreme Court, where the same are affirmed in favor of the claimant, the sum due thereby shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the Secretary of the Treasury of a copy of said judgment, certified by the clerk of the court of claims, and signed by the chief justice, or, in his absence, by the presiding judge of said court."

§ 2329. Reports of Judgments to Congress and Executive Officers.

§ *143, Judicial Code,*[q] *36 Stat. at L. 1136, Comp. St. 1911, p. 198, 1912 Supp. F. S. A. v. 1, p. 199.* "On the first day of every regular session of Congress, the clerk of the court of claims shall transmit to Congress a full and complete statement of all the judgments rendered by the court during the previous year, stating the amounts thereof and the parties in whose favor they were rendered, together with a brief synopsis of the nature of the claims upon which they were rendered. At the end of every term of the court he shall transmit a copy of its decisions to the heads of departments; to the Solicitor, the Comptroller, and the Auditors of the Treasury; to the Commissioner of the General Land Office and of Indian Affairs; to the chiefs of bureaus, and to other officers charged with the adjustment of claims against the United States."

A motion for a new trial or to vacate a judgment will not be entertained after discharge of the judgment by payment. Vaughn v. United States, 34 Ct. Cl. 342; Russell's Motion, 15 Ct. Cl. 168; Michot v. United States, 31 Ct. Cl. 299. See also, Ravesies v. United States, 24 Ct. Cl. 224. Discharge, United States v. Frerichs, 124 U. S. 315, 31 L. ed. 471, 8 Sup. Ct. Rep. 514.

[q] Re-enacting § 1057, R. S., Rose's Code, § 593, Comp. St. 1901, p. 731, 2 F. S. A. 55, which section is repealed by § 297, Judicial Code.

The purpose of these reports is to furnish guides in like cases.[2]

Attorney General's report of, to Congress.

§ *183, Judicial Code,*[r] *36 Stat. at L. 1142, Comp. St. 1911, p. 207, 1912 Supp. F. S. A. v. 1, p. 209.* "The Attorney General shall report to Congress, at the beginning of each regular session, the suits under section one hundred and eighty (§ 2311, infra), in which a final judgment or decree has been rendered, giving the date of each and a statement of the costs taxed in each case."

§ 2330. Payment of Judgments.

On claims referred from departments.

§ *150, Judicial Code,*[s] *36 Stat. at L. 1138, Comp. St. 1911, p. 200, 1912 Supp. F. S. A. v. 1, p. 202.* "The amount of any final judgment or decree rendered in favor of the claimant, in any case transmitted to the court of claims under the two preceding sections (§ 2309, above), shall be paid out of any specific appropriation applicable to the case, if any such there be; and where no such appropriation exists, the judgment or decree shall be paid in the same manner as other judgments of the said court."

Reports to Congress of adjudicated claims referred from departments and Congress.

§ *187, Judicial Code,*[t] *36 Stat. at L. 1143, Comp. St. 1911, p. 208, 1912 Supp. F. S. A. v. 1, p. 210.* "Reports of the court of claims to Congress, under sections one hundred and forty-eight (§ 2309, above) and one hundred and fifty-one (§ 2330, above), if not finally acted upon during the session at which they are reported, shall be continued from session to session and from Congress to Congress until the same shall be finally acted upon."

[2] Meigs v. United States, 20 Ct. Cl. 181.

[r] Re-enacting § 11 of Tucker act of March 3, 1887, ch. 359, Rose's Code, § 1487, Foster's Fed. Prac. (4th ed.) p. 287, 24 Stat. at L. 507, Comp. St. 1901, p. 756, 2 F. S. A. 86, which section is repealed by § 297, Judicial Code. In general, Sena v. American Turquoise Co. 220 U. S. 497, 55 L. ed. 559, 31 Sup. Ct. Rep. 488.

[s] Re-enacting § 1065, R. S., Rose's Code, § 1453, Comp. St. 1901, p. 739, 2 F. S. A. 64, which section is repealed by § 297, Judicial Code.

[t] Drawn from § 7 of the Bowman act of March 3, 1883, ch. 116, Rose's Code, § 1479, 22 Stat. at L. 486, Comp. St. 1901, p. 750, 2 F. S. A. 79, which section is repealed by § 297, Judicial Code.

§ 2331. Judgments for Set-Off or Counterclaim—Enforcement of.

§ *146, Judicial Code,*[u] *36 Stat. at L. 1137, Comp. St. 1911, p. 199, 1912 Supp. F. S. A. v. 1, p. 201.* "Upon the trial of any cause in which any set-off, counterclaim, claim for damages, or other demand is set up on the part of the government against any person making claim against the government in said court, the court shall hear and determine such claim or demand both for and against the government and claimant; and if upon the whole case it finds that the claimant is indebted to the government it shall render judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases provided for by law. Any transcript of such judgment, filed in the clerk's office of any district court, shall be entered upon the records thereof, and shall thereby become and be a judgment of such court and be enforced as other judgments in such court are enforced."

§ 2332. Appeals.

§ *181, Judicial Code,*[v] *36 Stat. at L. 1142, Comp. St. 1911, p. 207, 1912 Supp. F. S. A. v. 1, p. 209.* "The plaintiff or the United States, in any suit brought under the provision of the section last preceding (§ 2311, above), shall have the same right of appeal as is conferred under sections two hundred and forty-two (§ 2012, supra), and two hundred and forty-three (§ 2012, supra); and such right shall be exercised only within the time and in the manner therein prescribed."

In Indian cases.

§ *182, Judicial Code,*[w] *36 Stat. at L. 1142, Comp. St. 1911, p. 207, 1912 Supp. F. S. A. v. 1, p. 209.* "In any case brought in the court of claims under any act of Congress

[u] Re-enacting § 1061, R. S., Rose's Code, § 1449, Foster's Fed. Prac. (4th ed.) p. 1686, Comp. St. 1901, p. 737, 2 F. S. A. 61, which section is repealed by § 297, Judicial Code. In general, Wisconsin Central Railroad Co. v. United States, 164 U. S. 190, 41 L. ed. 406, 17 Sup. Ct. Rep. 45.

[v] Drawn from § 9 of Tucker act of March 3, 1887, ch. 359, Rose's Code, §§ 1487, 1892, Comp. St. 1901, p. 756, 2 F. S. A. 85, which section is repealed by § 297, Judicial Code. In general, Miltenberger v. Loganport Railway Co. 106 U. S. 286, 27 L. ed. 117, 1 Sup. Ct. Rep. 140.

[w] Re-enacting § 10 of act of March 3, 1891, ch. 538, 26 Stat. at L. 854, Comp. St. 1901, p. 763, 2 F. S. A. 100.

by which that court is authorized to render a judgment or decree against the United States, or against any Indian tribe or any Indians, or against any fund held in trust by the United States for any Indian tribe or for any Indians, the claimant, or the United States, or the tribe of Indians, or other party in interest, shall have the same right of appeal as is conferred under sections two hundred and forty-two and two hundred and forty-three; (§ 2012, supra) and such right shall be exercised only within the time and in the manner therein prescribed."

CHAPTER 48.

CIRCUIT COURT OF APPEALS.

Sec.
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§ 2400. Judicial Circuits.

§ 116, Judicial Code,[a] *36 Stat. at L. 1131, Comp. St. 1911, p. 190, 1912 Supp. F. S. A. v. 1, p. 191.* "There shall be nine judicial circuits of the United States, constituted as follows:

"First. The first circuit shall include the districts of Rhode Island, Massachusetts, New Hampshire, and Maine.

"Second. The second circuit shall include the districts of Vermont, Connecticut, and New York.

"Third. The third circuit shall include the districts of Pennsylvania, New Jersey, and Delaware.

"Fourth. The fourth circuit shall include the districts of Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

"Fifth. The fifth circuit shall include the districts of Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

[a] Including § 604, R. S., Foster's Fed. Prac. (4th ed.) pp. 223, 225, Comp. St. 1901, p. 485, 4 F. S. A. 59, and parts of acts in 4 F. S. A. 60, 34 Stat. at L. 275, 1909 Supp. F. S. A. 641, which statutes are repealed by § 297, Judicial Code. In general, Barrett v. United States, 169 U. S. 218, 42 L. ed. 723, 18 Sup. Ct. Rep. 327.

"Sixth. The sixth circuit shall include the districts of Ohio, Michigan, Kentucky, and Tennessee.

"Seventh. The seventh circuit shall include the districts of Indiana, Illinois, and Wisconsin.

"Eighth. The eighth circuit shall include the districts of Nebraska, Minnesota, Iowa, Missouri, Kansas, Arkansas, Colorado, Wyoming, North Dakota, South Dakota, Utah, and Oklahoma (now also New Mexico).

"Ninth. The ninth circuit shall include the districts of California, Oregon, Nevada, Washington, Idaho, Montana, and Hawaii (now also Arizona)."

§ 2401. Organization—Judges, Marshals, Clerks.

§ *117, Judicial Code,*[b] *36 Stat. at L. 1131, Comp. St. 1911, p. 190, 1912 Supp. F. S. A. v. 1, p. 191.* "There shall be in each circuit a circuit court of appeals, which shall consist of three judges, of whom two shall constitute a quorum, and which shall be a court of record, with appellate jurisdiction, as hereinafter limited and established."

§ *118, Judicial Code,*[c] *36 Stat. at L. 1131, Comp. St. 1911, p. 190, 1912 Supp. F. S. A. v. 1, p. 192, as amended Jan. 13, 1912, ch. 9, 37 Stat. at L. 53.* "There shall be in the second, seventh, and eighth circuits, respectively, four circuit judges; in the fourth circuit, two circuit judges; and in each of the other circuits, three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate. They shall be entitled to receive a salary at the rate of seven thousand dollars a year, each, payable monthly. Each circuit judge shall reside within his circuit. The circuit judges in each circuit shall be judges of the circuit court of appeals in that circuit, and it shall be the duty of each circuit judge in each circuit to sit as one of the judges of the circuit court of appeals in that circuit from time to time according to law: *Provided,* That nothing in this section shall be construed to prevent any circuit judge holding district court or serving in the commerce court, or otherwise, as provided for and authorized in other sections of this act."

[b] Re-enacting 26 Stat. at L. 826, Foster's Fed. Prac. (4th ed.) pp. 223, 759, 835, 1047, 1237, 1238, 1659, 2042, 2044, 2045, 2089, 2128, 2148–9, Comp. St. 1901, p. 547, 4 F. S. A. 396. In general, Ex parte United States, 226 U. S. 420, 57 L. ed. 281, 33 Sup. Ct. Rep. 170.

[c] Superseding § 2, act of March 3, 1891, 26 Stat. at L. 826, Rose's Code, §§ 563, 709, 804, Comp. St. 1901, p. 547, 4 F. S. A. 396, which statute is repealed by § 297, Judicial Code.

§ *121, Judicial Code,*[d] *36 Stat. at L. 1132, Comp. St. 1911, p. 191, 1912 Supp. F. S. A. v. 1, p. 193.* "The words 'circuit justice' and 'justice of a circuit,' when used in this title, shall be understood to designate the justice of the Supreme Court who is allotted to any circuit; but the word 'judge,' when applied generally to any circuit, shall be understood to include such justice."

§ 2402. Organization — Allotment of Supreme Court Judges.

§ *119, Judicial Code,*[e] *36 Stat. at L. 1131, Comp. St. 1911, p. 191, 1912 Supp. F. S. A. v. 1, p. 192.* "The Chief Justice and associate justices of the Supreme Court shall be allotted among the circuits by an order of the court, and a new allotment shall be made whenever it becomes necessary or convenient by reason of the alteration of any circuit, or of the new appointment of a Chief Justice or associate justice, or otherwise. If a new allotment becomes necessary at any other time than during a term, it shall be made by the Chief Justice, and shall be binding until the next term and until a new allotment by the court. Whenever, by reason of death or resignation, no justice is allotted to a circuit, the Chief Justice may, until a justice is regularly allotted thereto, temporarily assign a justice of another circuit to such circuit."

§ 2403. Organization—Competence and Presiding of Supreme Court Judges.

§ *120, Judicial Code,*[f] *36 Stat. at L. 1132, Comp. St. 1911, p. 121, 1912 Supp. F. S. A. v. 1, p. 192.* "The Chief Justice and the associate justices of the Supreme

[d] Re-enacting § 605, R. S., Foster's Fed. Prac. (4th ed.) p. 682, Comp. St. 1901, p. 486, 4 F. S. A. 238.

The justices of the Supreme Court are members of the circuit courts. In re Neagle, 135 U. S. 1, 34 L. ed. 55, 10 Sup. Ct. Rep. 658.

[e] Superseding § 606, R. S., Foster's Fed. Prac. (4th ed.) p. 682, Comp. St. 1901, p. 487, 4 F. S. A. 238, and § 618, Comp. St. 1901, p. 496, 4 F. S. A. 245, which sections are repealed by § 297, Judicial Code.

[f] Re-enacting § 3, act of March 3, 1891, ch. 217, 26 Stat. at L. 827, Rose's Code, § 309, Foster's Fed. Prac. (4th ed.) pp. 1236, 1451, 1681, 1965, 1972, 1981, 2013, 2014, 2016, 2048, Comp. St. 1901, p. 548, 4 F. S. A. 396.

A decree in which a disqualified judge took part will be quashed and set aside without regard to its merits. Moran v. Dillingham, 174 U. S. 153, 43 L. ed. 930, 19 Sup. Ct. Rep. 620. American Construction Co. v. Jacksonville, etc., R. Co. 148 U. S. 372, 37 L. ed. 486, 13 Sup. Ct. Rep. 758.

Court assigned to each circuit, and the several district judges within each circuit, shall be competent to sit as judges of the circuit court of appeals within their respective circuits. In case the Chief Justice or an associate justice of the Supreme Court shall attend at any session of the circuit court of appeals, he shall preside. In the absence of such Chief Justice, or associate justice, the circuit judges in attendance upon the court shall preside in the order of the seniority of their respective commissions. In case the full court at any time shall not be made up by the attendance of the Chief Justice or the associate justice, and the circuit judges, one or more district judges within the circuit shall sit in the court according to such order or provision among the district judges as either by general or particular assignment shall be designated by the court: *Provided,* That no judge before whom a cause or question may have been tried or heard in a district court, or existing circuit court, shall sit on the trial or hearing of such cause or question in the circuit court of appeals."

A judge who sat at the hearing below of a whole cause at any stage thereof is undoubtedly disqualified to sit in the circuit court of appeals at the hearing of the whole cause at the same or at any later stage.[3] A decree in which a disqualified judge took part will be quashed and set aside without regard to the merits.[4]

§ 2404. Clerk and Deputies.

§ *124, Judicial Code,*[g] *36 Stat. at L. 1132, Comp. St. 1911, p. 192, 1912 Supp. F. S. A. v. 1, p. 193.* "Each court shall appoint a clerk, who shall exercise the same powers and perform the same duties in regard to all matters within its jurisdiction, as are exercised and performed by the clerk of the Supreme Court, so far as the same may be applicable."

§ *125, Judicial Code,*[h] *36 Stat. at L. 1132, Comp. St.*

[3] Moran v. Dillingham, 174 U. S. 153, 43 L. ed. 930, 19 Sup. Ct. Rep. 620.
[4] Ibid.; American Constr. Co. v. Jacksonville, etc., R. Co. 148 U. S. 372, 37 L. ed 486, 13 Sup. Ct. Rep. 758.

[g] Re-enacting part of § 2, act of March 3, 1891, ch. 517, 26 Stat. at L. 826, Comp. St. 1901, p. 547, 4 F. S. A. 396. In general, Morton v. United States, 59 Fed. 349.

[h] New legislation. In general, Bryan, Collector of the Port of Charleston, v. Ker, Executrix, 222 U. S. 107, 56 L. ed. 114, 32 Sup. Ct. Rep. 26.

1911, p. 192, 1912 Supp. F. S. A. v. 1, p. 193. "The clerk of the circuit court of appeals for each circuit may, with the approval of the court, appoint such number of deputy clerks as the court may deem necessary. Such deputies may be removed at the pleasure of the clerk appointing them, with the approval of the court. In case of the death of the clerk his deputy or deputies shall, unless removed by the court, continue in office and perform the duties of the clerk in his name until a clerk is appointed and has qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk and his estate and the sureties on his official bond shall be liable, and his executor or administrator shall have such remedy for such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime."

Act Feb. 3, 1911, ch. 33, 36 Stat. at L. 895, 1912 Supp. F. S. A. v. 1, p. 129. "(United States courts—circuit courts of appeals—deputy clerks authorized.) That one deputy of the clerk of each circuit court of appeals may be appointed by the court on the application of the clerk and may be removed at the pleasure of the court. In case of the death of the clerk his deputy shall, unless removed, continue in office and perform the duties of the clerk in his name until a clerk is appointed and qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk and his estate and the sureties on his official bond shall be liable, and his executor or administrator shall have such remedy for such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime."

§ 2405. Marshals.

§ 123, Judicial Code,[1] *36 Stat. at L. 1132, Comp. St. 1911, p. 192, 1912 Supp. F. S. A. v. 1, p. 193.* "The United States marshals in and for the several districts of said courts shall be the marshals of said circuit courts of appeals, and shall exercise the same powers and perform the same duties, under the regulations of the court, as are

[1] Superseding part of § 2, act of March 3, 1891, ch. 517, 26 Stat. at L. 826, Rose's Code, §§ 563, 709, 804, Comp. St. 1901, p. 547, 4 F. S. A. 396.

exercised and performed by the marshal of the Supreme Court of the United States, so far as the same may be applicable."

§ 2406. Terms.

§ *126, Judicial Code,*[1] *36 Stat. at L. 1132, Comp. St. 1911, p. 192, 1912 Supp. F. S. A. v. 1, p. 193.* "A term shall be held annually by the circuit courts of appeals in the several judicial circuits at the following places, and at such times as may be fixed by said courts, respectively: In the first circuit, in Boston; in the second circuit, in New York; in the third circuit, in Philadelphia; in the fourth circuit, in Richmond; in the fifth circuit, in New Orleans, Atlanta, Fort Worth, and Montgomery; in the sixth circuit, in Cincinnati; in the seventh circuit, in Chicago; in the eighth circuit, in St. Louis, Denver or Cheyenne, and St. Paul; in the ninth circuit, in San Francisco, and each year in two other places in said circuit to be designated by the judges of said court; and in each of the above circuits, terms may be held at such other times and in such other places as said courts, respectively, may from time to time designate: *Provided,* That terms shall be held in Atlanta on the first Monday in October, in Fort Worth on the first Monday in November, in Montgomery on the third Monday in October, in Denver or in Cheyenne on the first Monday in September, and in St. Paul on the first Monday in May. All appeals, writs of error, and other appellate proceedings which may be taken or prosecuted from the district courts of the United States in the state of Georgia, in the state of Texas, and in the state of Alabama, to the circuit court of appeals for the fifth judicial circuit shall be heard and disposed of, respectively, by said court at the terms held in Atlanta, in Fort Worth, and in Montgomery, except that appeals or writs of error in cases of injunctions and in all other cases which, under the statutes and rules, or in the opinion of the court, are entitled to be brought to a speedy hearing may be heard and disposed of wherever said court may be sitting. All appeals, writs of errors, and other appellate proceedings which may hereafter be taken or prosecuted from the dis-

[1] Re-enacting 26 Stat. at L. 827, Comp. St. 1901, p. 548, 4 F. S. A. 689, 32 Stat. at L. 548, Foster's Fed. Prac. (4th ed.) 256, 4 F. S. A. 690, 32 Stat. at L. 756, 4 F. S. A. 691, 32 Stat. at L. 329, 4 F. S. A. 692, which statutes are repealed by § 297, Judicial Code.

trict court of the United States at Beaumont, Texas, to the circuit court of appeals for the fifth circuit, shall be heard and disposed of by the said circuit court of appeals at the terms of court held at New Orleans: *Provided,* That nothing herein shall prevent the court from hearing appeals or writs of error wherever the said courts shall sit, in cases of injunctions and in all other cases which, under the statutes and the rules, or in the opinion of the court, are entitled to be brought to a speedy hearing. All appeals, writs of error, and other appellate proceedings which may be taken or prosecuted from the district courts of the United States in the states of Colorado, Utah, and Wyoming, and the supreme court of the territory of New Mexico to the circuit court of appeals for the eighth judicial circuit, shall be heard and disposed of by said court at the terms held either in Denver or in Cheyenne, except that any case arising in any of said states or territory may, by consent of all the parties, be heard and disposed of at a term of said court other than the one held in Denver or Cheyenne."

§ 2407. Rules of Procedure.

§ *122, Judicial Code,*[k] *36 Stat. at L. 1132, Comp. St. 1911, p. 191, 1912 Supp. F. S. A. v. 1, p. 193.* "Each of said circuit courts of appeals shall prescribe the form and style of its seal, and the form of writs and other process and procedure as may be conformable to the exercise of its jurisdiction; and shall have power to establish all rules and regulations for the conduct of the business of the court within its jurisdiction as conferred by law."

Under the authority of this statute, rules have been promulgated for each of the nine circuits.

These rules are so similar in many respects that they are printed in our Appendix as one set of rules with notations of differences where any exist in any of the several circuits from the general rule existing in the other circuits.

In taking an appeal in any circuit these rules should be consulted.

[k] Re-enacting part of § 2, act of March 3, 1891, ch. 517, 26 Stat. at L. 826, Rose's Code, §§ 563, 709, 804, Comp. St. 1901, p. 547, 4 F. S. A. 396. Bradford v. Southern Railway Co. 195 U. S. 243, 49 L. ed. 178, 25 Sup. Ct. Rep. 55.

§ 2408. Admission to Practice. Under rule 7 all circuits, an attorney may be admitted to practise in the circuit court of appeals when admitted to practise in the Supreme or District Court of the United States on taking the oath or affirmation in the form prescribed in rule 2 of the Supreme Court of the United States. In the sixth, eighth, and ninth circuits it is enough if the attorney has been admitted to the court of last resort in the state of his residence and takes the requisite oaths. Fees are prescribed in last named circuits.

§ 2409. Reports of Decisions. All decisions from the time when the circuit courts of appeals were established, in 1891, have been reported currently in the Federal Reporter, and are now reported also in the C. C. A. Reports, of which there are now more than one hundred volumes.

CHAPTER 49.

THE SUPREME COURT.

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§ 2450. Judges.

§ *215, Judicial Code,*[a] *36 Stat. at L. 1152, Comp. St. 1911, p. 221, 1912 Supp. F. S. A. v. 1, p. 224.* "The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum."

§ *216, Judicial Code,*[b] *36 Stat. at L. 1152, Comp. St. 1911, p. 221, 1912 Supp. F. S. A. v. 1, p. 224.* "The associate justices shall have precedence according to the dates of their commissions, or, when the commissions of two or more of them bear the same date, according to their ages."

§ *217, Judicial Code,*[c] *36 Stat. at L. 1152, Comp. St. 1911, p. 221, 1912 Supp. F. S. A. v. 1, p. 224.* "In case of a vacancy in the office of Chief Justice, or of his inabil-

[a] Re-enacting § 673, R. S. Rose's Code, § 32, Comp. St. 1901, p. 558, 4 F. S. A. 434, which section is repealed by § 297, Judicial Code.

[b] Re-enacting § 674, R. S. Rose's Code, § 83, Foster's Fed. Prac. (4th ed.) p. 2068, Comp. St. 1901, p. 558, 4 F. S. A. 434, which section is repealed by § 297, Judicial Code.

[c] Re-enacting § 675, R. S. Rose's Code, § 34, Comp. St. 1901, p. 558, 4 F. S. A. 435, which section is repealed by § 297, Judicial Code.

ity to perform the duties and powers of his office, they shall devolve upon the associate justice who is first in precedence, until such disability is removed, or another Chief Justice is appointed and duly qualified. This provision shall apply to every associate justice who succeeds to the office of Chief Justice."

§ *218, Judicial Code,*[d] *36 Stat. at L. 1152, Comp. St. 1911, p. 221, 1912 Supp. F. S. A. v. 1, p. 225.* "The Chief Justice of the Supreme Court of the United States shall receive the sum of fifteen thousand dollars a year, and the justices thereof shall receive the sum of fourteen thousand five hundred dollars a year each, to be paid monthly."

§ 2451. Clerk.

§ *219, Judicial Code,*[e] *36 Stat. at L. 1152, Comp. St. 1911, p. 221, 1912 Supp. F. S. A. v. 1, p. 225,* "The Supreme Court shall have power to appoint a clerk and a marshal for said court, and a reporter of its decisions."

§ *220, Judicial Code,*[f] *36 Stat. at L. 1152, Comp. St. 1911, p. 222, 1912 Supp. F. S. A. v. 1, p. 225.* "The clerk of the Supreme Court shall, before he enters upon the execution of his office, give bond, with sufficient sureties, to be approved by the court, to the United States, in the sum of not less than five thousand and not more than twenty thousand dollars, to be determined and regulated by the Attorney General, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court. The Supreme Court may at any time, upon the motion of the Attorney General, to be made upon thirty days' notice, require a new bond, or a bond for an increased amount within the limits above prescribed; and the failure of the clerk to execute the same shall vacate his office. All bonds given by the clerk shall, after approval, be recorded in his office, and copies thereof from the records, certified by the clerk under seal of the court, shall be com-

[d] Re-enacting § 676, R. S. Comp. St. 1901, p. 558, 4 F. S. A. 435, which action is repealed by § 297, Judicial Code.

[e] Re-enacting § 677, R. S. Rose's Code, §§ 559, 614, 680, Comp. St. 1901, p. 559, 4 F. S. A. 73, which section is repealed by § 297, Judicial Code.

[f] Drawn from act of February 22, 1875, ch. 95, Rose's Code, §§ 575, 628, Comp. St. 1901, p. 619, 4 F. S. A. 83. Bond of clerk. Howard v. United States, 184 U. S. 676, 46 L. ed. 754, 22 Sup. Ct. Rep. 543.

petent evidence in any court. The original bonds shall be filed in the Department of Justice."

§ 2452. Deputies.

§ *221, Judicial Code,*[g] *36 Stat. at L. 1153, Comp. St. 1911, p. 222, 1912 Supp. F. S. A. v. 1, p. 225.* "One or more deputies of the clerk of the Supreme Court may be appointed by the court on the application of the clerk, and may be removed at the pleasure of the court. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk in his name until a clerk is appointed and qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk, and his estate, and the sureties on his official bond shall be liable; and his executor or administrator shall have such remedy for any such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime."

§ 2453. Marshal.

§ *219, Judicial Code,*[h] *36 Stat. at L. 1152, Comp. Stat. 1911, p. 221, 1912 Supp. F. S. A. v. 1, p. 225.* "The Supreme Court shall have power to appoint a clerk and a marshal for said court and a reporter of its decisions."

§ *224, Judicial Code,*[i] *36 Stat. at L. 1153, Comp. St. 1911, p. 222, 1912 Supp. F. S. A. v. 1, p. 225.* "The marshal is entitled to receive a salary at the rate of four thousand five hundred dollars a year. He shall attend the court at its sessions; shall serve and execute all process and orders issuing from it, or made by the Chief Justice or an associate justice in pursuance of law; and shall take charge of all property of the United States used by the court or its members. With the approval of the Chief Justice he may appoint assistants and messengers to attend the court, with the com-

[g] Re-enacting § 678, R. S. Rose's Code, § 560, Comp. St. 1901, p. 559, 4 F. S. A. 73, which section is repealed by § 297, Judicial Code.

[h] For Annotation of this § 219, Judicial Code, see footnote [e], ante, our § 2451.

[i] Re-enacting § 680, R. S. Rose's Code, §§ 615, 683, Comp. St. 1901, p. 560, 4 F. S. A. 159, changing the salary from $3,500 to $4,500 a year. This section is repealed by § 297, Judicial Code.

pensation allowed to officers of the House of Representatives of similar grade."

§ 2454. Supreme Court Reporter. The duties of the reporter are defined in § 225 of the Judicial Code, his salary and allowances are designated in § 226 of the Judicial Code, and the distribution of reports and digests is set out in § 227 of the Judicial Code. The cost of these books and provision for additional reports and digests is made in § 228 of the Judicial Code. Provision is made for distribution of sets of the Federal Reporter and Digests in § 229 of the Judicial Code. These sections may be found with annotations in the Appendix.

§ 2455. Admission to Practice.

Rule 2 of the Supreme Court of the United States. 1. It shall be requisite to the admission of attorneys or counselors to practise in this court, that they shall have been such for three years past in the supreme courts of the states to which they respectively belong, and that their private and professional character shall appear to be fair.

2. They shall respectively take and subscribe the following oath or affirmation, viz.:

I, —— ——, do solemnly swear [or affirm] that I will demean myself, as an attorney and counselor of this court, uprightly, and according to law; and that I will support the Constitution of the United States.

§ 255, Judicial Code,[1] *36 Stat. at L. 1160, Comp. St. 1911, p. 233, 1912 Supp. F. S. A. v. 1, p. 238.* "Any woman who shall have been a member of the bar of the highest court of any state or territory, or of the court of appeals of the District of Columbia, for the space of three years, and shall have maintained a good standing before such court, and who shall be a person of good moral character, shall, on motion, and the production of such record, be admitted to practise before the Supreme Court of the United States."

[1] Re-enacting act of February 15, 1879, ch. 81, 20 Stat. at L. 282, Rose's Code, § 490, Comp. St. 1901, p. 590, 1 F. S. A. 518.

§ 2456. Terms.

§ *230, Judicial Code,*[k] *36 Stat. at L. 1156, Comp. St. 1911, p. 226, 1912 Supp. F. S. A. v. 1, p. 229.* "The Supreme Court shall hold at the seat of government, one term annually, commencing on the second Monday in October, and such adjourned or special terms as it may find necessary for the despatch of business."

§ 2457. Adjournments.

§ *231, Judicial Code,*[l] *36 Stat. at L. 1156, Comp. St. 1911, p. 226, 1912 Supp. F. S. A. v. 1, p. 229.* "If, at any session of the Supreme Court, a quorum does not attend on the day appointed for holding it, the justices who do attend may adjourn the court from day to day for twenty days after said appointed time, unless there be sooner a quorum. If a quorum does not attend within said twenty days, the business of the court shall be continued over till the next appointed session; and if, during a term, after a quorum has assembled, less than that number attend on any day, the justices attending may adjourn the court from day to day until there is a quorum, or may adjourn without day."

§ *232, Judicial Code,*[m] *36 Stat. at L. 1156, Comp. St. 1911, p. 227, 1912 Supp. F. S. A. v. 1, p. 229.* "The justices attending at any term, when less than a quorum is present, may, within the twenty days mentioned in the preceding section, make all necessary orders touching any suit, proceeding, or process, depending in or returned to the court, preparatory to the hearing, trial, or decision thereof."

§ 2458. Original Jurisdiction—Issues of Fact.

§ *233, Judicial Code,*[n] *36 Stat. at L. 1156, Comp. St. 1911, p. 227, 1912 Supp. F. S. A. v. 1, p. 229.* "The Supreme Court shall have exclusive jurisdiction of all contro-

[k] Re-enacting § 684, R. S. Rose's Code, § 304, Foster's Fed. Prac. (4th ed.) p. 223, Comp. St. 1901, p. 563, 4 F. S. A. 692, which section is repealed by § 297, Judicial Code.

[l] Re-enacting § 685, R. S. Rose's Code, § 305, Comp. St. 1901, p. 563, 4 F. S. A. 692, which section is repealed by § 297, Judicial Code.

[m] Re-enacting § 686, R. S. Comp. St. 1901, p. 564, 4 F. S. A. 693, which section is repealed by § 297, Judicial Code.

[n] Re-enacting § 687, R. S. Rose's Code, § 36, Foster's Fed. Prac. (4th ed.) pp. 75, 76, Comp. St. 1901, p. 565, 4 F. S. A. 436, which section is repealed by § 297, Judicial Code.

versies of a civil nature where a state is a party, except between a state and its citizens, or between a state and citizens of other states, or aliens, in which latter cases it shall have original but not exclusive jurisdiction. And it shall have exclusively all such jurisdiction of suits or proceedings against ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have consistently with the law of nations; and original, but not exclusive, jurisdiction, of all suits brought by ambassadors, or other public ministers, or in which a consul or vice consul is a party."

§ *235, Judicial Code,*[o] *36 Stat. at L. 1156, Comp. St. 1911, p. 227, 1912 Supp. F. S. A. v. 1, p. 230.* "The trial of issues of fact in the Supreme Court, in all actions of law against citizens of the United States shall be by jury."

§ 2459. Prohibition and Mandamus.

§ *234, Judicial Code,*[p] *36 Stat. at L. 1156, Comp. St. 1911, p. 227, 1912 Supp. F. S. A. v. 1, p. 230.* "The Supreme Court shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a state, or an ambassador, or other public minister, or a consul, or vice consul is a party."

[o] Re-enacting § 689, R. S., Rose's Code, § 913, Comp. St. 1901, p. 565, 4 F. S. A. 443, which section is repealed by § 297, Judicial Code. In general, Capital Traction Co. v. Hof, 174 U. S. 1, 43 L. ed. 873, 19 Sup. Ct. Rep. 580.

[p] For Annotation of this § 234, Judicial Code, see footnote [o], ante, our § 2021.

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APPENDIX.

THE JUDICIAL CODE.

CHAPTER ONE.

DISTRICT COURTS—ORGANIZATION.

Sec.
1. District courts established; appointment and residence of judges.
2. Salaries of district judges.
3. Clerks.
4. Deputy clerks.
5. Criers and bailiffs.
6. Records; where kept.
7. Effect of altering terms.
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10. Monthly adjournments for trial of criminal causes.
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15. When designation to be made by Chief Justice.
16. New appointment and revocation.
17. Designation of district judge in aid of another judge.
18. When circuit judge may be designated to hold district court.
19. Duty of district and circuit judge in such cases.
20. When district judge is interested or related to parties.
21. When affidavit of personal bias or prejudice of judge is filed.
22. Continuance in case of vacancy in office.
23 Districts having more than one judge; division of business.

§ 1. In each of the districts described in chapter five, there shall be a court called a district court, for which there shall be appointed one judge, to be called a district judge; except that in the northern district of California, the northern district of Illinois, the district of Maryland, the district of Minnesota, the district of Nebraska, the district of New Jersey, the eastern district of New York, the northern and southern districts of Ohio, the district of Oregon, the eastern and western districts of Pennsylvania, and the western district of Washington, there shall be an additional district judge in each, and in the southern district of New York, three

additional district judges: *Provided*, That whenever a vacancy shall occur in the office of the district judge for the district of Maryland, senior in commission, such vacancy shall not be filled, and thereafter there shall be but one district judge in said district: *Provided further*, That there shall be one judge for the eastern and western districts of South Carolina, one judge for the eastern and middle districts of Tennessee, and one judge for the northern and southern districts of Mississippi: *Provided further*, That the district judge for the middle district of Alabama shall continue as heretofore to be a district judge for the northern district thereof. Every district judge shall reside in the district or one of the districts for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

Annotated, our § 22 note a.

§ 2. Each of the district judges shall receive a salary of six thousand dollars a year, to be paid in monthly instalments.

36 Stat. at L. 1087, Comp. St. 1911, p. 129, 1912 Supp. F. S. A. v. 1. p. 133. Superseding act of Feb. 12, 1903, ch. 547, 32 Stat. at L. 825, Rose's Code, § 469, 10 F. S. A. 198, and § 554, R. S., 4 F. S. A. 217, which is repealed by § 297, Judicial Code.

§ 3. A clerk shall be appointed for each district court by the judge thereof, except in cases otherwise provided for by law.

Annotated, our § 33 note m.

§ 4. Except as otherwise specially provided by law, the clerk of the district court for each district may, with the approval of the district judge thereof, appoint such number of deputy clerks as may be deemed necessary by such judge, who may be designated to reside and maintain offices at such places of holding court as the judge may determine. Such deputies may be removed at the pleasure of the clerk appointing them, with the concurrence of the district judge. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk, in his name, until a clerk is appointed and qualified; and for the default or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk and his estate and the sureties on his official bond shall be liable; and his executor or administrator shall have such remedy for any such default or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime.

Annotated, our § 34 note n.

§ 5. The district court for each district may appoint a crier for the court; and the marshal may appoint such number of persons, not exceeding five, as the judge may determine, to wait upon the grand and other juries, and for other necessary purposes.

Annotated, our § 38 note o.

§ 6. The records of a district court shall be kept at the place where the court is held. When it is held at more than one place in any district and the place of keeping the records is not specially provided by law, they shall be kept at either of the places of holding the court which may be designated by the district judge.

Annotated, our § 68 note h.

§ 7. No action, suit, proceeding, or process in any district court shall abate or be rendered invalid by reason of any act changing the time of holding such court, but the same shall be deemed to be returnable to, pending, and triable in the terms established next after the return day thereof.

Annotated, our § 67 note g.

§ 8. When the trial or hearing of any cause, civil or criminal, in a district court has been commenced and is in progress before a jury or the court, it shall not be stayed or discontinued by the arrival of the time fixed by law for another session of said court; but the court may proceed therein and bring it to a conclusion in the same manner and with the same effect as if another stated term of the court had not intervened.

Annotated, our § 65 note e.

§ 9. The district courts, as courts of admiralty and as courts of equity, shall be deemed always open for the purpose of filing any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings preparatory to the hearing, upon their merits, of all causes pending therein. Any district judge may, upon reasonable notice to the parties, make, direct, and award, at chambers or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable of course, according to the rules and practice of the court.

Annotated, our § 61 note a.

§ 10. District courts shall hold monthly adjournments of their regular terms, for the trial of criminal causes, when their business requires it to be done, in order to prevent undue expenses and delays in such cases.

Annotated our § 66 note f.

§ 11. A special term of any district court may be held at the same place where any regular term is held, or at such other place in the district as the nature of the business may require, and at such time and upon such notice as may be ordered by the district judge. Any business may be transacted at such special term which might be transacted at a regular term.

Annotated, our § 62 note b.

§ 12. If the judge of any district court is unable to attend at the commencement of any regular, adjourned, or special term, or any time during such term, the court may be adjourned by the marshal, or clerk, by virtue of a written order directed to him by the judge, to the next regular term, or to any earlier day, as the order may direct.

Annotated, our § 63 note c.

§ 13. When any district judge is prevented, by any disability, from holding any stated or appointed term of his district court, and that fact is made to appear by the certificate of the clerk, under the seal of the court, to any circuit judge of the circuit in which the district lies, or, in the absence of all the circuit judges, to the circuit justice of the circuit in which the district lies, any such circuit judge or justice may, if in his judgment the public interests so require, designate and appoint the judge of any other district in the same circuit to hold said court, and to discharge all the judicial duties of the judge so disabled, during such disability. Whenever it shall be certified by any such circuit judge or, in

his absence, by the circuit justice of the circuit in which the district lies, that for any sufficient reason it is impracticable to designate and appoint a judge of another district within the circuit to perform the duties of such disabled judge, the chief justice may, if in his judgment the public interests so require, designate and appoint the judge of any district in another circuit to hold said court and to discharge all the judicial duties of the judge so disabled, during such disability. Such appointment shall be filed in the clerk's office, and entered on the minutes of the said district court, and a certified copy thereof, under the seal of the court, shall be transmitted by the clerk to the judge so designated and appointed.

Annotated our § 24 note c.

§ 14. When, from the accumulation or urgency of business in any district court, the public interests require the designation and appointment hereinafter provided, and the fact is made to appear, by the certificate of the clerk, under the seal of the court, to any circuit judge of the circuit in which the district lies, or, in the absence of all the circuit judges, to the circuit justice of the circuit in which the district lies, such circuit judge or justice may designate and appoint the judge of any other district in the same circuit to have and exercise within the district first named the same powers that are vested in the judge thereof. Each of the said district judges may, in case of such appointment, hold separately at the same time a district court in such district, and discharge all the judicial duties of the district judge therein.

Annotated, our § 25 note d.

§ 15. If all the circuit judges and the circuit justice are absent from the circuit, or are unable to execute the provisions of either of the two preceding sections, or if the district judge so designated is disabled or neglects to hold the court and transact the business for which he is designated, the clerk of the district court shall certify the fact to the Chief Justice of the United States, who may thereupon designate and appoint in the manner aforesaid the judge of any district within such circuit or within any other circuit; and said appointment shall be transmitted to the clerk and be acted upon by him as directed in the preceding section.

Annotated, our § 26 note f.

§ 16. Any such circuit judge, or circuit justice, or the Chief Justice, as the case may be, may, from time to time, if in his judgment the public interests so require, make a new designation and appointment of any other district judge, in the manner, for the duties, and with the powers mentioned in the three preceding sections, and revoke any previous designation and appointment.

Annotated, our § 27 note g.

§ 17. It shall be the duty of the senior circuit judge then present in the circuit, whenever in his judgment the public interest so requires, to designate and appoint, in the manner and with the powers provided in section fourteen, the district judge of any judicial district within his circuit to hold a district court in the place or in aid of any other district judge within the same circuit.

Annotated, our § 25 note e.

§ 18. Whenever, in the judgment of the senior circuit judge of the circuit

in which the district lies, or of the circuit justice assigned to such circuit, or of the Chief Justice, the public interest shall require, the said judge, or associate justice, or Chief Justice, shall designate and appoint any circuit judge of the circuit to hold said district court.

As amended by Act of October 3, 1913, ch. 8. See our § 28.

Annotated, our § 28 note h.

§ 19. It shall be the duty of the district or circuit judge who is designated and appointed under either of the six preceding sections, to discharge all the judicial duties for which he is so appointed, during the time for which he is so appointed; and all the acts and proceedings in the courts held by him, or by or before him, in pursuance of said provisions, shall have the same effect and validity as if done by or before the district judge of the said district.

Annotated, our § 29 note i.

§ 20. Whenever it appears that the judge of any district court is in any way concerned in interest in any suit pending therein, or has been of counsel or is a material witness for either party, or is so related to or connected with either party as to render it improper, in his opinion, for him to sit on the trial, it shall be his duty, on application by either party, to cause the fact to be entered on the records of the court; and also an order that an authenticated copy thereof shall be forthwith certified to the senior circuit judge for said circuit then present in the circuit; and thereupon such proceedings shall be had as are provided in section fourteen.

Annotated, our § 30 note j.

§ 21. Whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge shall proceed no further therein, but another judge shall be designated in the manner prescribed in the section last preceding, or chosen in the manner prescribed in section twenty-three, to hear such matter. Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term of the court, or good cause shall be shown for the failure to file it within such time. No party shall be entitled in any case to file more than one such affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith. The same proceedings shall be had when the presiding judge shall file with the clerk of the court a certificate that he deems himself unable for any reason to preside with absolute impartiality in the pending suit or action.

Annotated, our § 31 note k.

§ 22. When the office of judge of any district court becomes vacant, all process, pleadings, and proceedings pending before such court shall, if necessary, be continued by the clerk thereof until such times as a judge shall be appointed, or designated to hold such court; and the judge so designated, while holding such court, shall possess the powers conferred by, and be subject to the provisions contained in, section nineteen.

Annotated, our § 64 note d.

§ 23. In districts having more than one district judge, the judges may agree upon the division of business and assignment of cases for trial in said district; but in case they do not so agree, the senior circuit judge of the circuit in which the district lies, shall make all necessary orders for the division of business and the assignment of cases for trial in said district.

Annotated, our § 23 note b.

CHAPTER TWO.

DISTRICT COURTS—JURISDICTION.

Sec.
24. Original jurisdiction.
Par. 1. Where the United States are plaintiffs; and of civil suits at common law or in equity.
2. Of crimes and offenses.
3. Of admiralty causes, seizures, and prizes.
4. Of suits under any law relating to the slave trade.
5. Of cases under internal revenue, customs, and tonnage laws.
6. Of suits under postal laws.
7. Of suits under the patent, the copyright, and the trade-mark laws.
8. Of suits for violation of interstate commerce laws.
9. Of penalties and forfeitures.
10. Of suits on debentures.
11. Of suits for injuries on account of acts done under laws of the United States.
12. Of suits concerning civil rights.
13. Of suits against persons having knowledge of conspiracy, etc.
14. Of suits to redress the deprivation, under color of law, of civil rights.

Sec.
24. Original jurisdiction—Cont'd.
Par. 15. Of suits to recover certain offices.
16. Of suits against national-banking associations.
17. Of suits by aliens for torts.
18. Of suits against consuls and vice-consuls.
19. Of suits and proceedings in bankruptcy.
20. Of suits against the United States.
21. Of suits for the unlawful inclosure of public lands.
22. Of suits under immigration and contract-labor laws.
23. Of suits against trusts, monopolies, and unlawful combinations.
24. Of suits concerning allotments of land to Indians.
25. Of partition suits where United States is joint tenant.
25. Appellate jurisdiction under Chinese-exclusion laws.
26. Appellate jurisdiction over Yellowstone National Park.
27. Jurisdiction of crimes on Indian reservations in South Dakota.

§ 24. The district courts shall have original jurisdiction as follows:

First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same state claiming lands under grants from different states; or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different states, or (c) is between citizens of a state and foreign states, citizens, or subjects. No district court shall have cognizance of any suit (except upon foreign bills of exchange) to recover upon any promissory note or other chose in action in favor of any assignee, or of any subsequent holder if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover upon said note or other chose in action if no assignment had been made: *Provided, however*, That the foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section.

Second. Of all crimes and offenses cognizable under the authority of the United States.

Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it; of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize.

Fourth. Of all suits arising under any law relating to the slave trade.

Fifth. Of all cases arising under any law providing for internal revenue, or from revenue from imports or tonnage, except those cases arising under any law providing revenue from imports, jurisdiction of which has been conferred upon the court of customs appeals.

Sixth. Of all cases arising under the postal laws.

Seventh. Of all suits at law or in equity arising under the patent, the copyright, and the trade-mark laws.

Eighth. Of all suits and proceedings arising under any law regulating commerce, except those suits and proceedings exclusive jurisdiction of which has been conferred upon the commerce court.

Ninth. Of all suits and proceedings for the enforcement of penalties and forfeitures incurred under any law of the United States.

Tenth. Of all suits by the assignee of any debenture for drawback of duties, issued under any law for the collection of duties, against the person to whom such debenture was originally granted, or against any indorser thereof, to recover the amount of such debenture.

Eleventh. Of all suits brought by any person to recover damages for any injury to his person or property on account of any act done by him, under any law of the United States, for the protection or collection of any of the revenues thereof, or to enforce the right of citizens of the United States to vote in the several states.

Twelfth. Of all suits authorized by law to be brought by any person for the recovery of damages on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section nineteen hundred and eighty, Revised Statutes.

Thirteenth. Of all suits authorized by law to be brought against any person who, having knowledge that any of the wrongs mentioned in section nineteen hundred and eighty, Revised Statutes, are about to be done, and, having power to prevent or aid in preventing the same, neglects or refuses so to do, to recover damages for any such wrongful act.

Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any state, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States.

Fifteenth. Of all suits to recover possession of any office, except that of elector of President or Vice-President, Representative in or Delegate to Congress, or member of a state legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote, on account of race, color, or previous condition of servitude; *Provided*, That such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Constitution of the United States, and secured by any law, to enforce the right of citizens of the United States to vote in all the states.

Sixteenth. Of all cases commenced by the United States, or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title "National Banks," Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the states in which they are respectively located.

Seventeenth. Of all suits brought by any alien for a tort only, in violation of the laws of nations or of a treaty of the United States.

Eighteenth. Of all suits against consuls and vice consuls.

Nineteenth. Of all matters and proceedings in bankruptcy.

Twentieth. Concurrent with the court of claims, of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or

admiralty, if the United States were suable, and of all set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the government of the United States against any claimant against the government in said court: *Provided, however,* That nothing in this paragraph shall be construed as giving to either the district courts or the court of claims jurisdiction to hear and determine claims growing out of the late Civil War, and commonly known as "war claims," or to hear and determine other claims which had been rejected or reported on adversely prior to the third day of March, eighteen hundred and eighty-seven, by any court, department, or commission authorized to hear and determine the same, or to hear and determine claims for pensions; or as giving to the district courts jurisdiction of cases brought to recover fees, salary, or compensation for official services of officers of the United States or brought for such purpose by persons claiming as such officers or as assignees or legal representatives thereof; but no suit pending on the twenty-seventh day of June, eighteen hundred and ninety-eight, shall abate or be affected by this provision: *And provided further,* That no suit against the government of the United States shall be allowed under this paragraph unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided,* That the claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the suit be brought within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively. All suits brought and tried under the provisions of this paragraph shall be tried by the court without a jury.

Twenty-first. Of proceedings in equity, by writ of injunction, to restrain violations of the provisions of laws of the United States to prevent the unlawful inclosure of public lands; and it shall be sufficient to give the court jurisdiction if service of original process be had in any civil proceeding on any agent or employee having charge or control of the inclosure.

Twenty-second. Of all suits and proceedings arising under any law regulating the immigration of aliens, or under the contract labor laws.

Twenty-third. Of all suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies.

Twenty-fourth. Of all actions, suits, or proceedings involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty.

Twenty-fifth. Of suits in equity brought by any tenant in common or joint tenant for the partition of lands in cases where the United States is one of such tenants in common or joint tenants, such suits to be brought in the district in which such land is situate.

Annotated, our § 194 note b. Referred to in our §§ 216, 230, 237, 261, 263, 351, 381, 2100.

§ 25. The district courts shall have appellate jurisdiction of the judg-

ments and orders of United States commissioners in cases arising under the Chinese exclusion laws.

Annotated, our § 202 note c.

§ 26. The district court for the district of Wyoming shall have jurisdiction of all felonies committed within the Yellowstone National Park and appellate jurisdiction of judgments in cases of conviction before the commissioner authorized to be appointed under section five of an act entitled "An Act to Protect the Birds and Animals in Yellowstone National Park, and to Punish Crimes in said Park, and for Other Purposes," approved May seventh, eighteen hundred and ninety-four.

Annotated, our § 203 note d.

§ 27. The district court of the United States for the district of South Dakota shall have jurisdiction to hear, try, and determine all actions and proceedings in which any person shall be charged with the crime of murder, manslaughter, rape, assault with intent to kill, arson, burglary, larceny, or assault with a dangerous weapon, committed within the limits of any Indian reservation in the state of South Dakota.

Annotated, our § 204 note e.

CHAPTER THREE.

DISTRICT COURTS—REMOVAL OF CAUSES.

Sec.
28. Removal of suits from state to United States district courts.
29. Procedure for removal.
30. Suits under grants of land from different states.
31. Removal of causes against persons denied any civil rights, etc.
32. When petitioner is in actual custody of state court.
33. Suits and prosecutions against revenue officers, etc.
34. Removal of suits by aliens.
35. When copies of records are refused by clerk of state court.
36. Previous attachment bonds, orders, etc., remain valid.
37. Suits improperly in district court may be dismissed or remanded.
38. Proceedings in suits removed.
39. Time for filing record; return of record, how enforced.

§ 28. Any suit of a civil nature, at law or in equity, arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought, in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district. Any other suit of a civil nature, at law or in equity, of which the district courts of the United States are given jurisdiction by this title, and which are now pending or which may hereafter be brought, in any state court, may be removed into the district court of the United States for the proper district by the defendant or defendants therein, being nonresidents of that state. And when in any suit mentioned in this section there shall be a controversy which is wholly be-

tween citizens of different states, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the district court of the United States for the proper district. And where a suit is now pending, or may hereafter be brought, in any state court, in which there is a controversy between a citizen of the state in which the suit is brought and a citizen of another state, any defendant, being such citizen of another state, may remove such suit into the district court of the United States for the proper district, at any time before the trial thereof, when it shall be made to appear to said district court that from prejudice or local influence he will not be able to obtain justice in such state court, or in any other state court to which the said defendant may, under the laws of the state, have the right, on account of such prejudice or local influence, to remove said cause: *Provided*, That if it further appear that said suit can be fully and justly determined as to the other defendants in the state court, without being affected by such prejudice or local influence, and that no party to the suit will be prejudiced by a separation of the parties, said district court may direct the suit to be remanded, so far as relates to such other defendants, to the state court, to be proceeded with therein. At any time before the trial of any suit which is now pending in any district court, or may hereafter be entered therein, and which has been removed to said court from a state court on the affidavit of any party plaintiff that he had reason to believe and did believe that, from prejudice or local influence, he was unable to obtain justice in said state court, the district court shall, on application of the other party, examine into the truth of said affidavit and the grounds thereof, and, unless it shall appear to the satisfaction of said court that said party will not be able to obtain justice in said state court, it shall cause the same to be remanded thereto. Whenever any cause shall be removed from any state court into any district court of the United States, and the district court shall decide that the cause was improperly removed, and order the same to be remanded to the state court from whence it came, such remand shall be immediately carried into execution, and no appeal or writ of error from the decision of the district court so remanding such cause shall be allowed: *Provided*, That no case arising under an act entitled "An Act Relating to the Liability of Common Carriers by Railroad to Their Employees in Certain Cases," approved April twenty-second, nineteen hundred and eight, or any amendment thereto, and brought in any state court of competent jurisdiction, shall be removed to any court of the United States.

Annotated, our § 221 note c. Referred to in our §§ 261, 286, 289, 295, 299, 351, 353, 358, 361, 363, 365, 372, 373, 378, 381, as amended Act June 20, 1914, ch. 48. See our § 299.

§ 29. Whenever any party entitled to remove any suit mentioned in the last preceding section, except suits removable on the grounds of prejudice or local influence, may desire to remove such suit from a state court to the district court of the United States, he may make and file a petition, duly verified, in such suit in such state court at the time, or any time before the defendant is required by the laws of the state or the rule of the state court in which such suit is brought to answer or plead to the

declaration or complaint of the plaintiff, for the removal of such suit into the district court to be held in the district where such suit is pending, and shall make and file therewith a bond, with good and sufficient surety, for his or their entering in such district court, within thirty days from the date of filing said petition, a certified copy of the record in such suit, and for paying all costs that may be awarded by the said district court if said district court shall hold that such suit was wrongfully or improperly removed thereto, and also for their appearing and entering special bail in such suit if special bail was originally requisite therein. It shall then by the duty of the state court to accept said petition and bond and proceed no further in such suit. Written notice of said petition and bond for removal shall be given the adverse party or parties prior to filing the same. The said copy being entered within said thirty days as aforesaid in said district court of the United States, the parties so removing the said cause shall, within thirty days thereafter, plead, answer, or demur to the declaration or complaint in said cause, and the cause shall then proceed in the same manner as if it had been originally commenced in the said district court.

Annotated, our § 290 note e. Referred to in our §§ 291, 292, 293, 294.

§ 30. If in any action commenced in a state court the title of land be concerned, and the parties are citizens of the same state and the matter in dispute exceeds the sum or value of three thousand dollars, exclusive of interest and costs, the sum or value being made to appear, one or more of the plaintiffs or defendants, before the trial, may state to the court, and make affidavit if the court require it, that he or they claim, and shall rely upon, a right or title to the land under a grant from a state, and produce the original grant, or an exemplification of it, except where the loss of public records shall put it out of his or their power, and shall move that any one or more of the adverse party inform the court whether he or they claim a right or title to the land under a grant from some other state, the party or parties so required shall give such information, or otherwise not be allowed to plead such grant or give it in evidence upon the trial. If he or they inform the court that he or they do claim under such grant, any one or more of the party moving for such information may then, on petition and bond, as hereinbefore mentioned in this chapter, remove the cause for trial to the district court of the United States next to be holden in such district; and any one of either party removing the cause shall not be allowed to plead or give evidence of any other title than that by him or them stated as aforesaid as the ground of his or their claim.

Annotated, our § 262 note a. Referred to in our §§ 300, 352.

§ 31. When any civil suit or criminal prosecution is commenced in any state court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the state, or in the part of the state where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States, or against any officer, civil or military, or other person, for any

arrest or imprisonment or other trespasses or wrongs made or committed by virtue of or under color of authority derived from any law providing for equal rights as aforesaid, or for refusing to do any act on the ground that it would be inconsistent with such law, such suit or prosecution may, upon the petition of such defendant, filed in said state court at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed for trial into the next district court to be held in the district where it is pending. Upon the filing of such petition all further proceedings in the state courts shall cease, and shall not be resumed except as hereinafter provided. But all bail and other security given in such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the state court. It shall be the duty of the clerk of the state court to furnish such defendant, petitioning for a removal, copies of said process against him, and of all pleadings, depositions, testimony, and other proceedings in the case. If such copies are filed by said petitioner in the district court on the first day of its session, the cause shall proceed therein in the same manner as if it had been brought there by original process; and if the said clerk refuses or neglects to furnish such copies, the petitioner may thereupon docket the case in the district court, and the said court shall then have jurisdiction therein, and may, upon proof of such refusal or neglect of said clerk, and upon reasonable notice to the plaintiff, require the plaintiff to file a declaration, petition, or complaint in the cause; and, in case of his default, may order a nonsuit and dismiss the case at the costs of the plaintiff, and such dismissal shall be a bar to any further suit touching the matter in controversy. But if, without such refusal or neglect of said clerk to furnish such copies and proof thereof, the petitioner for removal fails to file copies in the district court, as herein provided, a certificate, under the seal of the district court, stating such failure, shall be given, and upon the production thereof in said state court the cause shall proceed therein as if no petition for removal had been filed.

Annotated, our § 216 note b. Referred to in our §§ 302, 370.

§ 32. When all the acts necessary for the removal of any suit or prosecution, as provided in the preceding section, have been performed, and the defendant petitioning for such removal is in actual custody on process issued by said state court, it shall be the duty of the clerk of said district court to issue a writ of habeas corpus cum causa, and of the marshal, by virtue of said writ, to take the body of the defendant into his custody, to be dealt with in said district court according to law and the orders of said court, or, in vacation, of any judge thereof; and the marshal shall file with or deliver to the clerk of said state court a duplicate copy of said writ.

Annotated, our § 303 note r.

§ 33. When any civil suit or criminal prosecution is commenced in any court of a state against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer on account of any act done under color of his office or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law; or is commenced against any person

holding property or estate by title derived from any such officer, and affects the validity of any such revenue law; or when any suit is commenced against any person for on account of anything done by him while an officer of either House of Congress in the discharge of his official duty, in executing any order of such House, the said suit or prosecution may, at any time before the trial or final hearing thereof, be removed for trial into the district court next to be holden in the district where the same is pending, upon the petition of such defendant to said district court, and in the following manner: Said petition shall set forth the nature of the suit or prosecution and be verified by affidavit, and, together with a certificate signed by an attorney or counselor at law of some court of record of the state where such suit or prosecution is commenced, or of the United States, stating that, as counsel for the petitioner, he has examined the proceedings against him and carefully inquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said district court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office. The cause shall thereupon be entered on the docket of the district court, and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the state court. When the suit is commenced in the state court by summons, subpœna, petition, or other process except capias, the clerk of the district court shall issue a writ of certiorari to the state court, requiring it to send to the district court the record and proceedings in the cause. When it is commenced by capias or by any other similar form or proceeding by which a personal arrest is ordered, he shall issue a writ of habeas corpus cum causa, a duplicate of which shall be delivered to the clerk of the state court, or left at his office, by the marshal of the district or his deputy, or by some person duly authorized thereto; and thereupon it shall be the duty of the state court to stay all further proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the district court, and any further proceedings, trial, or judgment therein in the state court shall be void. If the defendant in the suit or prosecution be in actual custody on mesne process therein, it shall be the duty of the marshal, by virtue of the writ of habeas corpus cum causa, to take the body of the defendant into his custody, to be dealt with in the cause according to law and the order of the district court, or, in vacation, of any judge thereof; and if, upon the removal of such suit or prosecution, it is made to appear to the district court that no copy of the record and proceedings therein in the state court can be obtained, the district court may allow and require the plaintiff to proceed *de novo* and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said district court. On failure of the plaintiff so to proceed, judgment of *non prosequitur* may be rendered against him, with costs for the defendant.

Annotated, our § 304 note s. Referred to in our §§ 305, 306, 307.

§ 34. Whenever a personal action has been or shall be brought in any state court by an alien against any citizen of a state who is, or at the

time the alleged action accrued was, a civil officer of the United States, being a nonresident of that state wherein jurisdiction is obtained by the state court, by personal service of process, such action may be removed into the district court of the United States in and for the district in which the defendant shall have been served with the process, in the same manner as now provided for the removal of an action brought in a state court by the provisions of the preceding section.

Annotated, our § 301 note p. Referred to in our § 373.

§ 35. In any case where a party is entitled to copies of the records and proceedings in any suit or prosecution in a state court, to be used in any court of the United States, if the clerk of said state court, upon demand, and the payment or tender of the legal fees, refuses or neglects to deliver to him certified copies of such records and proceedings, the court of the United States in which such records and proceedings are needed may, on proof by affidavit that the clerk of said state court has refused or neglected to deliver copies thereof, on demand as aforesaid, direct such record to be supplied by affidavit or otherwise, as the circumstances of the case may require and allow; and thereupon such proceeding, trial, and judgment may be had in the said court of the United States, and all such process awarded, as if certified copies of such records and proceedings had been regularly before the said court.

Annotated, our § 308 note w.

§ 36. When any suit shall be removed from a state court to a district court of the United States, any attachment or sequestration of the goods or estate of the defendant had in such suit in the state court shall hold the goods or estate so attached or sequestered to answer the final judgment or decree in the same manner as by law they would have been held to answer final judgment or decree had it been rendered by the court in which said suit was commenced. All bonds, undertakings, or security given by either party in such suit prior to its removal shall remain valid and effectual notwithstanding said removal; and all injunctions, orders, and other proceedings had in such suit prior to its removal shall remain in full force and effect until dissolved or modified by the court to which such suit shall be removed.

Annotated, our § 311 note z.

§ 37. If in any suit commenced in a district court, or removed from a state court to a district court of the United States, it shall appear to the satisfaction of the said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially invoke a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said district court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just.

Annotated our § 310 note g. Referred to in our § 601.

§ 38. The district court of the United States shall, in all suits removed

under the provisions of this chapter, proceed therein as if the suit had been originally commenced in said district court, and the same proceedings had been taken in such suit in said district court as shall have been had therein in said state court prior to its removal.

Annotated, our § 312 note a.

§ 39. In all causes removable under this chapter, if the clerk of the state court in which any such cause shall be pending shall refuse to any one or more of the parties or persons applying to remove the same, a copy of the record therein, after tender of legal fees for such copy, said clerk so offending shall, on conviction thereof in the district court of the United States to which said action or proceeding was removed, be fined not more than one thousand dollars, or imprisoned not more than one year, or both. The district court to which any cause shall be removable under this chapter shall have power to issue a writ of certiorari to said state court commanding such state court to make return of the record in any such cause removed as aforesaid, or in which any one or more of the plaintiffs or defendants have complied with the provisions of this chapter for the removal of the same, and enforce said writ according to law. If it shall be impossible for the parties or persons removing any cause under this chapter, or complying with the provisions for the removal thereof, to obtain such copy, for the reason that the clerk of said state court refuses to furnish a copy, on payment of legal fees, or for any other reason, the district court shall make an order requiring the prosecutor in any such action or proceeding to enforce forfeiture or recover penalty, as aforesaid, to file a copy of the paper or proceeding by which the same was commenced, within such time as the court may determine; and in default thereof the court shall dismiss the said action or proceeding; but if said order shall be complied with, then said district court shall require the other party to plead, and said action or proceeding shall proceed to final judgment. The said district court may make an order requiring the parties thereto to plead *de novo;* and the bond given, conditioned as aforesaid, shall be discharged so far as it requires copy of the record to be filed as aforesaid.

Annotated, our § 309 note x.

CHAPTER FOUR.

DISTRICT COURTS—MISCELLANEOUS PROVISIONS.

Sec.
40. Capital cases; where triable.
41. Offenses on the high seas, etc., where triable.
42. Offenses begun in one district and completed in another.
43. Suits for penalties and forfeitures, where brought.
44. Suits for internal-revenue taxes, where brought.
45. Seizures, where cognizable.
46. Capture of insurrectionary property, where cognizable.
47. Certain seizures cognizable in any district into which the property is taken.
48. Jurisdiction in patent cases.
49. Proceedings to enjoin Comptroller of the Currency.
50. When a part of several defendants cannot be served.
51. Civil suits; where to be brought.
52. Suits in states containing more than one district.
53. Districts containing more than one division; where suit to be brought; transfer of criminal cases.
54. Suits of a local nature, where to be brought.
55. When property lies in different districts in same state.
56. When property lies in different states in same circuit; jurisdiction of receiver.
57. Absent defendants in suits to enforce liens, remove clouds on titles, etc.
58. Civil causes may be transferred to another division of district by agreement.
59. Upon creation of new district or division, where prosecution to be instituted or action brought.
60. Creation of new district, or transfer of territory not to divest lien; how lien to be enforced.
61. Commissioners to administer oaths to appraisers.
62. Transfer of records to district court when a territory becomes a state.
63. District judge shall demand and compel delivery of records of territorial court.
64. Jurisdiction of district courts in cases transferred from territorial courts.
65. Receivers to manage property according to state laws.
66. Suits against receiver.
67. Certain persons not to be appointed or employed as officers of courts.
68. Certain persons not to be masters or receivers.

§ 40. The trial of offenses punishable with death shall be had in the county where the offense was committed, where that can be done without great inconvenience.

Annotated, our § 174 note n.

§ 41. The trial of all offenses committed upon the high seas, or elsewhere out of the jurisdiction of any particular state or district, shall be in the district where the offender is found, or into which he is first brought.

Annotated, our § 174 note o.

§ 42. When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined,

and punished in either district, in the same manner as if it had been actually and wholly committed therein.

Annotated, our § 174 note p.

§ 43. All pecuniary penalties and forfeitures may be sued for and recovered either in the district where they accrue or in the district where the offender is found.

Annotated, our § 175 note g. Referred to in our § 366.

§ 44. Taxes accruing under any law providing internal revenue may be sued for and recovered either in the district where the liability for such tax occurs or in the district where the delinquent resides.

Annotated, our § 176 note s. Referred to in our § 362.

§ 45. Proceedings on seizures made on the high seas, for forfeiture under any law of the United States, may be prosecuted in any district into which the property so seized is brought and proceedings instituted. Proceedings on such seizures made within any district shall be prosecuted in the district where the seizure is made, except in cases where it is otherwise provided.

Annotated, our § 175 note r.

§ 46. Proceedings for the condemnation of any property captured, whether on the high seas or elsewhere out of the limits of any judicial district, or within any district, on account of its being purchased or acquired, sold or given, with intent to use or employ the same, or to suffer it to be used or employed, in aiding, abetting, or promoting any insurrection against the government of the United States, or knowingly so used or employed by the owner thereof, or with his consent, may be prosecuted in any district where the same may be seized, or into which it may be taken and proceedings first instituted.

Annotated, our § 177 note t.

§ 47. Proceedings on seizures for forfeiture of any vessel or cargo entering any port of entry which has been closed by the President in pursuance of law, or of goods and chattels coming from a state or section declared by proclamation of the President to be in insurrection into other parts of the United States, or of any vessel or vehicle conveying such property, or conveying persons to or from such state or section, or of any vessel belonging, in whole or in part, to any inhabitant of such state or section, may be prosecuted in any district into which the property so seized may be taken and proceedings instituted; and the district court thereof shall have as full jurisdiction over such proceedings as if the seizure was made in that district.

Annotated, our § 178 note v.

§ 48. In suits brought for the infringement of letters patent the district courts of the United States shall have jurisdiction, in law or in equity, in the district in which the defendant is an inhabitant, or in any district in which the defendant, whether a person, partnership, or corporation, shall have committed acts of infringement and have a regular and established place of business. If such suit is brought in a district of which the defendant is not an inhabitant, but in which such defendant has a regular and established place of business, service of process, summons, or subpœna upon the defendant may be made by service upon the agent or agents

engaged in conducting such business in the district in which suit is brought.

Annotated, our § 171 note k. Referred to in our § 364.

§ 49. All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located.

Annotated, our § 172 note l. Referred to in our § 173 m.

§ 50. Where there are several defendants in any suit at law or in equity, and one or more of them are neither inhabitants of nor found within the district in which the suit is brought, and do not voluntarily appear, the court may entertain jurisdiction, and proceed to the trial and adjudication of the suit between the parties who are properly before it; but the judgment or decree rendered therein shall not conclude or prejudice other parties not regularly served with process nor voluntarily appearing to answer; and nonjoinder of parties who are not inhabitants of nor found within the district, as aforesaid, shall not constitute matter of abatement or objection to the suit.

Annotated, our § 173 note m.

§ 51. Except as provided in the five succeeding sections, no person shall be arrested in one district for trial in another, in any civil action before a district court; and, except as provided in the six succeeding sections, no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of the residence of either the plaintiff or the defendant.

Annotated, our § 161 note a. Referred to in our §§ 230, 248, 356.

§ 52. When a state contains more than one district, every suit not of a local nature, in the district court thereof, against a single defendant, inhabitant of such state, must be brought in the district where he resides; but if there are two or more defendants, residing in different districts of the state, it may be brought in either district, and a duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant resides. The clerk issuing the duplicate writ shall indorse thereon that it is a true copy of a writ sued out of the court of the proper district; and such original and duplicate writs, when executed and returned into the office from which they issue, shall constitute and be proceeded on as one suit; and upon any judgment or decree rendered therein, execution may be issued, directed to the marshal of any district in the same state.

Annotated, our § 162 note b.

§ 53. When a district contains more than one division, every suit not of a local nature against a single defendant must be brought in the division where he resides; but if there are two or more defendants residing in different divisions of the district it may be brought in either division. All mesne and final process subject to the provisions of this section may be served and executed in any or all of the divisions of the district, or if

the state contains more than one district, then in any of such districts, as provided in the preceding section. All prosecutions for crimes or offenses shall be had within the division of such districts where the same were committed, unless the court, or the judge thereof, upon the application of the defendant, shall order the cause to be transferred for prosecution to another division of the district. When a transfer is ordered by the court or judge, all the papers in the case, or certified copies thereof, shall be transmitted by the clerk, under the seal of the court, to the division to which the cause is so ordered transferred; and thereupon the cause shall be proceeded with in said division in the same manner as if the offense had been committed therein. In all cases of the removal of suits from the courts of a state to the district court of the United States such removal shall be to the United States district court in the division in which the county is situated from which the removal is made; and the time within which the removal shall be perfected, in so far as it refers to or is regulated by the terms of the United States courts, shall be deemed to refer to the terms of the United States district court in such division.

Annotated, our § 163 note c.

§ 54. In suits of a local nature, where the defendant resides in a different district, in the same state, from that in which the suit is brought, the plaintiff may have original and final process against him, directed to the marshal of the district in which he resides.

Annotated, our § 164 note d.

§ 55. Any suit of a local nature, at law or in equity, where the land or other subject-matter of a fixed character lies partly in one district and partly in another, within the same state, may be brought in the district court of either district; and the court in which it is brought shall have jurisdiction to hear and decide it, and to cause mesne or final process to be issued and executed, as fully as if the said subject-matter were wholly within the district for which such court is constituted.

Annotated, our § 165 note e.

§ 56. Where in any suit in which a receiver shall be appointed the land or other property of a fixed character, the subject of the suit, lies within different states in the same judicial circuit, the receiver so appointed shall, upon giving bond as required by the court, immediately be vested with full jurisdiction and control over all the property, the subject of the suit, lying or being within such circuit; subject, however, to the disapproval of such order, within thirty days thereafter, by the circuit court of appeals for such circuit, or by a circuit judge thereof, after reasonable notice to adverse parties and an opportunity to be heard upon the motion for such disapproval; and subject, also, to the filing and entering in the district court for each district of the circuit in which any portion of the property may lie or be, within ten days thereafter, of a duly certified copy of the bill and of the order of appointment. The disapproval of such appointment within such thirty days, or the failure to file such certified copy of the bill and order of appointment within ten days, as herein required, shall divest such receiver of jurisdiction over all such property except that portion thereof lying or being within the state in which the suit is brought. In any case coming within the provisions of

this section, in which a receiver shall be appointed, process may issue and be executed within any district of the circuit in the same manner and to the same extent as if the property were wholly within the same district; but orders affecting such property shall be entered of record in each district in which the property affected may lie or be.

Annotated, our § 167 note g.

§ 57. When in any suit commenced in any district court of the United States to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to, real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks. In case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district; and when a part of the said real or personal property against which such proceedings shall be taken shall be within another district, but within the same state, such suit may be brought in either district in said state: *Provided, however,* That any defendant or defendants not actually personally notified as above provided may, at any time within one year after final judgment in any suit mentioned in this section, enter his appearance in said suit in said district court, and thereupon the said court shall make an order setting aside the judgment therein and permitting said defendant or defendants to plead therein on payment by him or them of such costs as the court shall deem just; and thereupon said suit shall be proceeded with to final judgment according to law.

Annotated, our § 166 note f. Referred to in our § 656.

§ 58. Any civil cause, at law or in equity, may, on written stipulation of the parties or of their attorneys of record signed and filed with the papers in the case, in vacation or in term, and on the written order of the judge signed and filed in the case in vacation or on the order of the court duly entered of record in term, be transferred to the court of any other division of the same district, without regard to the residence of the defendants, for trial. When a cause shall be ordered to be transferred

to a court in any other division, it shall be the duty of the clerk of the court from which the transfer is made to carefully transmit to the clerk of the court to which the transfer is made the entire file of papers in the cause and all documents and deposits in his court pertaining thereto, together with a certified transcript of the records of all orders, interlocutory decrees, or other entries in the cause; and he shall certify, under the seal of the court, that the papers sent are all which are on file in said court belonging to the cause; for the performance of which duties said clerk so transmitting and certifying shall receive the same fees as are now allowed by law for similar services, to be taxed in the bill of costs, and regularly collected with the other costs in the cause; and such transcript, when so certified and received, shall henceforth constitute a part of the record of the cause in the court to which the transfer shall be made. The clerk receiving such transcript and original papers shall file the same and the case shall then proceed to final disposition as other cases of a like nature.

Annotated, our § 168 note g.

§ 59. Whenever any new district or division has been or shall be established, or any county or territory has been or shall be transferred from one district or division to another district or division, prosecutions for crimes and offenses committed within such district, division, county, or territory prior to such transfer, shall be commenced and proceeded with the same as if such new district or division had not been created, or such county or territory had not been transferred, unless the court, upon the application of the defendant, shall order the cause to be removed to the new district or division for trial. Civil actions pending at the time of the creation of any such district or division, or the transfer of any such county or territory, and arising within the district or division so created or the county or territory so transferred, shall be tried in the district or division as it existed at the time of the institution of the action, or in the district or division so created, or to which the county or territory is or shall be so transferred, as may be agreed upon by the parties, or as the court shall direct. The transfer of such prosecutions and actions shall be made in the manner provided in the section last preceding.

Annotated, our § 169 note i.

§ 60. The creation of a new district or division, or the transfer of any county or territory from one district or division to another district or division, shall not affect or divest any lien theretofore acquired in the circuit or district court by virtue of a decree, judgment, execution, attachment, seizure, or otherwise, upon property situated or being within the district or division so created, or the county or territory so transferred. To enforce any such lien, the clerk of the court in which the same is acquired, upon the request and at the cost of the party desiring the same, shall make a true and certified copy of the record thereof, which, when so made and certified, and filed in the proper court of the district or division in which such property is situated or shall be, after such transfer, shall constitute the record of such lien in such court, and shall be evidence in all courts and places equally with the original thereof; and thereafter

like proceedings shall be had thereon, and with the same effect, as though the cause or proceeding had been originally instituted in such court. The provisions of this section shall apply not only in all cases where a district or division is created, or a county or any territory is transferred by this or any future act, but also in all cases where a district or division has been created, or a county or any territory has been transferred by any law heretofore enacted.

Annotated, our § 170 note g.

§ 61. Any district judge may appoint commissioners, before whom appraisers of vessels or goods and merchandise seized for breaches of any law of the United States, may be sworn; and such oaths, so taken, shall be as effectual as if taken before the judge in open court.

Annotated, our § 42 note pp.

§ 62. When any territory is admitted as a state, and a district court is established therein, all the records of the proceedings in the several cases pending in the highest court of said territory at the time of such admission, and all records of the proceedings in the several cases in which judgments or decrees had been rendered in said territorial court before that time, and from which writs of error could have been sued out or appeals could have been taken, or from which writs of error had been sued out or appeals had been taken and prosecuted to the Supreme Court or to the circuit court of appeals, shall be transferred to and deposited in the district court for the said state.

Annotated, our § 69 note i.

§ 63. It shall be the duty of the district judge, in the case provided in the preceding section, to demand of the clerk, or other person having possession or custody of the records therein mentioned, the delivery thereof, to be deposited in said district court; and in case of the refusal of such clerk or person to comply with such demand, the said district judge shall compel the delivery of such records by attachment or otherwise, according to law.

Anotated, our § 69 note j.

§ 64. When any territory is admitted as a state, and a district court is established therein, the said district court shall take cognizance of all cases which were pending and undetermined in the trial courts of such territory, from the judgments or decrees to be rendered in which writs of error could have been sued out or appeals taken to the Supreme Court or to the circuit court of appeals, and shall proceed to hear and determine the same.

Annotated, our § 209 note g.

§ 65. Whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the state in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall wilfully violate any provision of this section shall be fined not more than three thousand dollars, or imprisoned not more than one year, or both.

Annotated, our § 1062 note h.

§ 66. Every receiver or manager of any property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such manager or receiver was appointed so far as the same may be necessary to the ends of justice.

Annotated, our § 1053 note c.

§ 67. No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to the judge of such court.

As amended, Act Dec. 21, 1911, ch. 4, 37 Stat. at L. 46. See our § 32.

Annotated, our § 32 note l.

§ 68. No clerk of a district court of the United States or his deputy shall be appointed a receiver or master in any case, except where the judge of said court shall determine that special reasons exist therefor, to be assigned in the order of appointment.

Annotated, our § 41, note p.

CHAPTER FIVE.

DISTRICT COURTS—DISTRICTS, AND PROVISIONS APPLICABLE TO PARTICULAR STATES.

Sec.
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§ 69. The United States are divided into judicial districts as follows:

36 Stat. at L. 1105, Comp. St. 1911, p. 156, 1912 Supp. F. S. A. v. 1, p. 160. Re-enacting § 297, R. S. U. S., Comp. St. 1901, p. 316, 4 F. S. A. 16,

which section is repealed by § 297, Judicial Code. In general, Barrett v. United States, 169 U. S. 218, 42 L. ed. 723, 18 Sup. Ct. Rep. 327.

§ 70. The state of Alabama is divided into three judicial districts, to be known as the northern, middle, and southern districts of Alabama. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Cullman, Jackson, Lawrence, Limestone, Madison, and Morgan, which shall constitute the northeastern division of said district; also the territory embraced on the date last mentioned in the counties of Colbert, Franklin, and Lauderdale, which shall constitute the northwestern division of said district; also the territory embraced on the date last mentioned in the counties of Cherokee, De Kalb, Etowah, Marshall, and Saint Clair, which shall constitute the middle division of said district; also the territory embraced on the date last mentioned in the counties of Blount, Jefferson, and Shelby, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Walker, Winston, Marion, Fayette, and Lamar, which shall constitute the Jasper division of said district; also the territory embraced on the date last mentioned in the counties of Calhoun, Clay, Cleburne, and Talladega, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Bibb, Greene, Pickens, Sumter, and Tuscaloosa, which shall constitute the western division of said district. Terms of the district court for the northeastern division shall be held at Huntsville on the first Tuesday in April and the second Tuesday in October; for the northwestern division, at Florence on the second Tuesday in February and the third Tuesday in October: *Provided*, That suitable rooms and accommodations for holding court at Florence shall be furnished free of expense to the government; for the middle division, at Gadsden on the first Tuesdays in February and August: *Provided*, That suitable rooms and accommodations for the holding court at Gadsden shall be furnished free of expense to the government; for the southern division, at Birmingham on the first Mondays in March and September, which courts shall remain in session for the transaction of business at least six months in each calendar year; for the Jasper division, at Jasper on the second Tuesdays in January and June: *Provided*, That suitable rooms and accommodations for holding court at Jasper shall be furnished free of expense to the government; for the eastern division, at Anniston on the first Mondays in May and November; and for the western division, at Tuscaloosa on the first Tuesdays in January and June. The clerk of the court for the northern district shall maintain an office in charge of himself or a deputy at Anniston, at Florence, at Jasper, and at Gadsden, which shall be kept open at all times for the transaction of the business of said court. The district judge for the northern district shall reside at Birmingham. The middle district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Autauga, Barbour, Bullock, Butler, Chilton, Chambers, Coosa, Covington, Crenshaw, Elmore, Lee, Lowndes, Macon, Montgomery, Pike, Randolph, Russell, and Tallapoosa, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Coffee, Dale, Geneva, Henry, and Houston,

which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Montgomery on the first Tuesdays in May and December; and for the southern division, at Dothan on the first Mondays in June and December. The clerk for the middle district shall maintain an office, in charge of himself or a deputy, at Dothan, which shall be open at all times for the transaction of the business of said division. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Baldwin, Choctaw, Clarke, Conecuh, Escambia, Mobile, Monroe, and Washington, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Dallas, Hale, Marengo, Perry, and Wilcox, which shall constitute the northern division of said district. Terms of the district court for the southern division shall be held at Mobile on the fourth Mondays in May and November; and for the northern division, at Selma on the first Mondays in May and November.

Annotated, our § 101 note a. As amended, Act Feb. 28, 1913, ch. 89. See our § 101.

§ 71. The state of Arkansas is divided into two districts, to be known as the eastern and western districts of Arkansas. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Sevier, Howard, Little River, Pike, Hempstead, Miller, Lafayette, Columbia, Nevada, Ouachita, Union, and Calhoun, which shall constitute the Texarkana division of said district; also the territory embraced on the date last mentioned in the counties of Polk, Scott, Yell, Logan, Sebastian, Franklin, Crawford, Washington, Benton, and Johnson, which shall constitute the Fort Smith division of said district; also the territory embraced on the date last mentioned in the counties of Baxter, Boone, Carroll, Madison, Marion, Newton and Searcy, which shall constitute the Harrison division of said district. Terms of the district court for the Texarkana division shall be held at Texarkana on the second Mondays in May and November; for the Fort Smith division, at Fort Smith on the second Mondays in January and June; and for the Harrison division, at Harrison on the second Mondays in April and October. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Lee, Phillips, Saint Francis, Cross, Monroe, and Woodruff, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Independence, Cleburne, Stone, Izard, Sharp, and Jackson, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Crittenden, Clay, Craighead, Greene, Mississippi, Poinsett, Fulton, Randolph, and Lawrence, which shall constitute the Jonesboro division of said district; and also the territory embraced on the date last mentioned in the counties of Arkansas, Ashley, Bradley, Chicot, Clark, Cleveland, Conway, Dallas, Desha, Drew, Faulkner, Garland, Grant, Hot Spring, Jefferson, Lincoln, Lonoke, Montgomery, Perry, Pope, Prairie, Pulaski, Saline, Van Buren, and White, which shall constitute the western division of said district. Terms of the district court for the eastern division shall be held at Helena on the second Monday in

March and the first Monday in October; for the northern division, at Batesville on the fourth Monday in May and the second Monday in December; for the Jonesboro division, at Jonesboro on the second Mondays in May and November; and for the western division at Little Rock on the first Monday in April and the third Mondays in October. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Little Rock, at Helena, at Jonesboro, and at Batesville, which shall be kept open at all times for the transaction of the business of the court. And the clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Fort Smith, at Harrison, and at Texarkana, which shall be kept open at all times for the transaction of the business of the court.

Annotated, our § 102 note b.

§ 72. The state of California is divided into two districts, to be known as the northern and southern districts of California. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, and Tulare, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Fresno on the first Monday in May and the second Monday in November; and for the southern division, at Los Angeles, on the second Monday in January and the second Monday in July, and at San Diego on the second Mondays in March and September. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba. Terms of the district court for the northern district shall be held at San Francisco on the first Monday in March, the second Monday in July, and the first Monday in November; at Sacramento on the second Monday in April; and at Eureka on the third Monday in July.

Annotated, our § 104 note c.

§ 73. The state of Colorado shall constitute one judicial district, to be known as the district of Colorado. Terms of the district court shall be held at Denver on the first Tuesdays in May and November; at Pueblo on the first Tuesday in April; and at Montrose on the second Tuesday in September.

Annotated, our § 105 note d.

§ 74. The state of Connecticut shall constitute one judicial district, to be known as the district of Connecticut. Terms of the district court shall be held at New Haven on the fourth Tuesdays in February and September, and at Hartford on the fourth Tuesday in May and the first Tuesday in December.

Annotated, our § 106 note e.

§ 75. The state of Delaware shall constitute one judicial district, to be known as the district of Delaware. Terms of the district court shall be held at Wilmington on the second Tuesdays in March, June, September, and December.

Annotated, our § 107 note f.

§ 76. The state of Florida is divided into two districts, to be known as the northern and southern districts of Florida. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Baker, Bradford, Brevard, Citrus, Clay, Columbia, Dade, De Soto, Duval, Hamilton, Hernando, Hillsboro, Lake, Lee, Madison, Manatee, Marion, Monroe, Nassau, Orange, Osceola, Palm Beach, Pasco, Polk, Putnam, Saint John, Sumter, Suwanee, Saint Lucie, and Volusia. Terms of the district court for the southern district shall be held at Ocala on the third Monday in January; at Tampa on the second Monday in February; at Key West on the first Mondays in May and November; at Jacksonville on the first Monday in December; at Fernandina on the first Monday in April; and at Miami on the fourth Monday in April. The district court for the southern district shall be open at all times for the purpose of hearing and deciding causes of admiralty and maritime jurisdiction. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alachua, Calhoun, Escambia, Franklin, Gadsden, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Santa Rosa, Taylor, Wakulla, Walton, and Washington. Terms of the district court for the northern district shall be held at Tallahassee on the second Monday in January; at Pensacola on the first Mondays in May and November; at Marianna on the first Monday in April; and at Gainesville on the second Mondays in June and December.

Annotated, our § 108 note f.

§ 77. The state of Georgia is divided into two districts, to be known as the northern and southern districts of Georgia. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Campbell, Carroll, Clayton, Cobb, Coweta, Cherokee, Dekalb, Douglas, Dawson, Fannin, Fayette, Fulton, Forsyth, Gilmer, Gwinnett, Hall, Henry, Lumpkin, Milton, Newton, Pickens, Rockdale, Spalding, Towns, and Union, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Banks, Clarke, Elbert, Franklin, Greene, Habersham, Hart, Jackson, Morgan, Madison, Oglethorpe, Oconee, Rabun, Stephens, Walton, and White, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Chattahoochee, Clay, Early, Harris, Heard, Meriwether, Marion, Muscogee, Quitman, Randolph, Schley, Stewart, Talbot, Taylor, Terrell, Troup, and Webster, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Bartow, Chattooga, Catoosa, Dade, Floyd, Gordon, Haralson, Murray, Paulding, Polk, Walker, and Whitfield, which shall constitute the northwestern division of said district. Terms of the district court for northern division of said district shall be held at Atlanta on the second Monday in March and the first Monday in October; for the eastern division, at Athens on the second Monday in

April and the first Monday in November; for the western division, at Columbus on the first Mondays in May and December; and for the northwestern division, at Rome on the third Mondays in May and November. The clerk of the court for the northern district shall maintain an office in charge of himself or a deputy at Athens, at Columbus, and at Rome, which shall be kept open at all times for the transaction of the business of the court. The southern district shall include the territory embraced on the said first day of July, nineteen hundred and ten, in the counties of Appling, Bulloch, Bryan, Camden, Chatham, Emanuel, Effingham, Glynn, Jeff Davis, Liberty, Montgomery, McIntosh, Screven, Tatnall, Toombs, and Wayne, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Baldwin, Bibb, Butts, Crawford, Dodge, Dooly, Hancock, Houston, Jasper, Jones, Laurens, Macon, Monroe, Pike, Pulaski, Putnam, Sumter, Telfair, Twiggs, Upson, Wilcox, and Wilkinson, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Burke, Columbia, Glascock, Jefferson, Jenkins, Johnson, Lincoln, McDuffie, Richmond, Taliaferro, Washington, Wilkes, and Warren, which shall constitute the northeastern division; also the territory embraced on the date last mentioned in the counties of Berrien, Brooks, Charlton, Clinch, Coffee, Decatur, Echols, Grady, Irwin, Lowndes, Pierce, and Ware, which shall constitute the southwestern division; and also the territory embraced on the date last mentioned in the counties of Baker, Benn Hill, Calhoun, Crisp, Colquitt, Dougherty, Lee, Miller, Mitchell, Thomas, Tift, Turner, and Worth, which shall constitute the Albany division. Terms of the district court for the western division shall be held at Macon on the first Mondays in May and October; for the eastern division, at Savannah on the second Tuesdays in February, May, August, and November; for the northeastern division, at Augusta on the first Monday in April and the third Monday in November; for the southwestern division, at Valdosta on the second Mondays in June and December; and for the Albany division, at Albany on the third Mondays in June and December.

Annotated, our § 109 note h. As amended March 4, 1913, ch. 167. See our § 109.

§ 78. The state of Idaho shall constitute one judicial district, to be known as the district of Idaho. It is divided into four divisions, to be known as the northern, central, southern, and eastern divisions. The territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bonner, Kootenai, and Shoshone, shall constitute the northern division of said district; and the territory embraced on the date last mentioned in the counties of Idaho, Latah, and Nez Perce, shall constitute the central division of said district; and the territory embraced on the date last mentioned in the counties of Ada, Boise, Blaine, Cassia, Twin Falls, Canyon, Elmore, Lincoln, Owyhee, and Washington, shall constitute the southern division of said district; and the territory embraced on the date last mentioned in the counties of Bannock, Bear Lake, Bingham, Custer, Fremont, Lemhi, and Oneida, shall constitute the eastern division of said district. Terms of the district court for the northern division of said district shall be held at Cœur d'Alene city on the fourth Monday in May and the third Monday in

November; for the central division, at Moscow on the second Monday in May and the first Monday in November; for the southern division, at Boise city on the second Mondays in February and September; and for the eastern division, at Pocatello on the second Mondays in March and October. The clerk of the court shall maintain an office in charge of himself or a deputy at Cœur d'Alene city, at Moscow, at Boise city, and at Pocatello, which shall be open at all times for the transaction of the business of the court.

Annotated, our § 110 note i.

§ 79. The state of Illinois is divided into three districts, to be known as the northern, southern, and eastern districts of Illinois. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Cook, Dekalb, Dupage, Grundy, Kane, Kendall, Lake, Lasalle, McHenry, and Will, which shall constitute the eastern division; also the territory embraced on the date last mentioned in the counties of Boone, Carroll, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, and Winnebago, which shall constitute the western division. Terms of the district court for the eastern division shall be held at Chicago on the first Mondays in February, March, April, May, June, July, September, October, and November, and the third Monday in December; and for the western division, at Freeport on the third Mondays in April and October. The clerk of the court for the northern district shall maintain an office in charge of himself or a deputy at Chicago and at Freeport, which shall be kept open at all times for the transaction of the business of the court. The marshal for the northern district shall maintain an office in the division in which he himself does not reside and shall appoint at least one deputy who shall reside therein. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bureau, Fulton, Henderson, Henry, Knox, Livingston, McDonough, Marshall, Mercer, Putnam, Peoria, Rock Island, Stark, Tazewell, Warren, and Woodford, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Adams, Bond, Brown, Calhoun, Cass, Christian, Dewitt, Greene, Hancock, Jersey, Logan, McLean, Macon, Macoupin, Madison, Mason, Menard, Montgomery, Morgan, Pike, Sangamon, Schuyler, and Scott, which shall constitute the southern division. Terms of the district court for the northern division shall be held at Peoria on the third Mondays in April and October; for the southern division, at Springfield on the first Mondays in January and June, and at Quincy on the first Mondays in March and September. The clerk of the court for the southern district shall maintain an office in charge of himself or a deputy at Peoria, at Springfield, and at Quincy, which shall be kept open at all times for the transaction of the business of the court. The marshal for said southern district shall appoint at least one deputy residing in the said northern division, who shall maintain an office at Peoria. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alexander, Champaign, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Gallatin, Hamilton, Hardin, Iroquois, Jackson, Jasper, Jefferson, Johnson, Kankakee, Lawrence, Marion, Massac, Monroe, Moul-

trie, Perry, Piatt, Pope, Pulaski, Randolph, Richland, Saint Clair, Saline, Shelby, Union, Vermilion, Wabash, Washington, Wayne, White, and Williamson. Terms of the district court for the eastern district shall be held at Danville on the first Mondays in March and September; at Cairo on the first Mondays in April and October; and at East Saint Louis on the first Mondays in May and November. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Danville, at Cairo, and at East Saint Louis, which shall be kept open at all times for the transaction of the business of the court, and shall there keep the records, files, and documents pertaining to the court at that place.

§ 80. The state of Indiana shall constitute one judicial district, to be known as the district of Indiana. Terms of the district court shall be held at Indianapolis on the first Tuesdays in May and November; at New Albany on the first Mondays in January and July; at Evansville on the first Mondays in April and October; at Fort Wayne on the second Tuesdays in June and December; and at Hammond on the third Tuesdays in April and October. The clerk of the court shall appoint four deputy clerks, one of whom shall reside and keep his office at New Albany, one at Evansville, one at Fort Wayne, and one at Hammond. Each deputy shall keep in his office full records of all actions and proceedings of the district court held at that place.

Annotated, our § 112 note k.

§ 81. The state of Iowa is divided into two judicial districts, to be known as the northern and southern districts of Iowa. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Allamakee, Dubuque, Buchanan, Clayton, Delaware, Fayette, Winneshiek, Howard, Chickasaw, Bremer, Blackhawk, Floyd, Mitchell, and Jackson, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties on Jones, Cedar, Linn, Johnson, Iowa, Benton, Tama, Grundy, and Hardin, which shall constitute the Cedar Rapid division; also the territory embraced on the date last mentioned in the counties of Emmit, Palo Alto, Pocahontas, Calhoun, Kossuth, Humboldt, Webster, Winnebago, Hancock, Wright, Hamilton, Worth, Cerro Gordo, Franklin, and Butler, which shall constitute the central division; also the territory embraced on the date last mentioned in the counties of Dickinson, Clay, Buena Vista, Sac, Osceola, O'Brien, Cherokee, Ida, Lyon, Sioux, Plymouth, Woodbury, and Monona, which shall constitute the western division. Terms of the district court for the eastern division shall be held at Dubuque on the fourth Tuesday in April and the first Tuesday in December, and at Waterloo on the second Tuesdays in May and September; for the Cedar Rapids division, at Cedar Rapids on the first Tuesday in April and the fourth Tuesday in September; for the central division, at Fort Dodge on the second Tuesdays in June and November; and for the western division, at Sioux City on the fourth Tuesday in May and the third Tuesday in October. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Louisa, Henry, Des Moines, Lee, and Van Buren, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Marshall, Story,

Boone, Greene, Guthrie, Dallas, Polk, Jasper, Poweshiek, Marion, Warren, and Madison, which shall constitute the central division of said district; also the territory embraced on the date last mentioned in the counties of Carroll, Crawford, Harrison, Shelby, Audubon, Cass, Pottawattamie, Mills, and Montgomery, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Adair, Adams, Clarke, Decatur, Fremont, Lucas, Page, Ringgold, Taylor, Union, and Wayne, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Scott, Muscatin, Washington, and Clinton, which shall constitute the Davenport division of said district; also the territory embraced on the date last mentioned in the counties of Davis, Appanoose, Mahaska, Keokuk, Jefferson, Monroe, and Wapello, which shall constitute the Ottumwa division of said district. Terms of the district court for the eastern division shall be held at Keokuk on the second Tuesday in April and the third Tuesday in October; for the central division, at Des Moines on the second Tuesday in May and the third Tuesday in November; for the western division, at Council Bluffs on the second Tuesday in March and the third Tuesday in September; for the southern division, at Creston on the fourth Tuesday in March and the first Tuesday in November; for the Davenport division, at Davenport on the fourth Tuesday in April and the first Tuesday in October; and for the Ottumwa division, at Ottumwa on the first Monday after the fourth Tuesday in March, and the first Monday after the third Tuesday in October. The clerk of the court for said district shall maintain an office in charge of himself or a deputy at Davenport and at Ottumwa, for the transaction of the business of said divisions.

Annotated, our § 113 note 1, as amended Mch. 3, 1913. See our § 113.

§ 82. The state of Kansas shall constitute one judicial district, to be known as the district of Kansas. It is divided into three divisions, to be known as the first, second, and third divisions of the district of Kansas. The first division shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Atchison, Brown, Chase, Cheyenne, Clay, Cloud, Decatur, Dickinson, Doniphan, Douglas, Ellis, Franklin, Geary, Gove, Graham, Jackson, Jefferson, Jewell, Johnson, Leavenworth, Lincoln, Logan, Lyon, Marion, Marshall, Mitchell, Morris, Nemaha, Norton, Osage, Osborne, Ottawa, Phillips, Pottawatomie, Rawlins, Republic, Riley, Rooks, Russell, Saline, Shawnee, Sheridan, Sherman, Smith, Thomas, Trego, Wabaunsee, Wallace, Washington, and Wyandotte. The second division shall include the territory embraced on the date last mentioned in the counties of Barber, Barton, Butler, Clark, Comanche, Cowley, Edwards, Ellsworth, Finney, Ford, Grant, Gray, Greeley, Hamilton, Harper, Harvey, Hodgeman, Haskell, Kingman, Kiowa, Kearny, Lane, McPherson, Morton, Meade, Ness, Pratt, Pawnee, Reno, Rice, Rush, Scott, Sedgwick, Stafford, Stevens, Seward, Sumner, Stanton, and Wichita. The third division shall include the territory embraced on the said date last mentioned in the counties of Allen, Anderson, Bourbon, Cherokee, Coffey, Chautauqua, Crawford, Elk, Greenwood, Labette, Linn, Miami, Montgomery, Neosho, Wilson, and Woodson. Terms of the district court for the first division shall be held at Leavenworth on the second Monday

in October; at Topeka on the second Monday in April; at Kansas City on the second Monday in January and the first Monday in October; and at Salina on the second Monday in May; but no cause, action, or proceeding shall be tried or considered at any term held at Salina unless by consent of all the parties thereto, or by order of the court for cause. Terms of the district court for the second division shall be held at Wichita on the second Mondays in March and September; and for the third division, at Fort Scott on the first Monday in May and the second Monday in November. The clerk of the district court shall appoint two deputies, one of whom shall reside and keep his office at Fort Scott, and the other at Wichita; and the marshal shall appoint a deputy who shall reside and keep his office at Fort Scott.

Annotated, our § 114 note m.

§ 83. The state of Kentucky is divided into two districts, to be known as the eastern and western districts of Kentucky. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Carroll, Trimble, Henry, Shelby, Anderson, Mercer, Boyle, Gallatin, Boone, Kenton, Campbell, Pendleton, Grant, Owen, Franklin, Bourbon, Scott, Woodford, Fayette, Jessamine, Garrard, Madison, Lincoln, Rockcastle, Pulaski, Wayne, Whitley, Bell, Knox, Harlan, Laurel, Clay, Leslie, Letcher, Perry, Owsley, Jackson, Estill, Lee, Breathitt, Knott, Pike, Floyd, Magoffin, Martin, Johnson, Lawrence, Boyd, Greenup, Carter, Elliott, Morgan, Wolfe, Powell, Menifee, Clark, Montgomery, Bath, Rowan, Lewis, Fleming, Mason, Bracken, Robertson, Nicholas, and Harrison, with the waters thereof. Terms of the district court for the eastern district shall be held at Frankfort on the second Monday in March and the fourth Monday in September; at Covington on the first Monday in April and the third Monday in October; at Richmond on the fourth Monday in April and the second Monday in November; at London on the second Monday in May and the fourth Monday in November; at Catlettsburg on the fourth Monday in May and the second Monday in December; and at Jackson on the first Monday in March and the third Monday in September: *Provided*, That suitable rooms and accommodations are furnished for holding court at Jackson free of expense to the government until such time as a public building shall be erected there. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Oldham, Jefferson, Spencer, Bullitt, Nelson, Washington, Marion, Larue, Taylor, Casey, Green, Adair, Russell, Clinton, Cumberland, Monroe, Metcalfe, Allen, Barren, Simpson, Logan, Warren, Butler, Hart, Edmonson, Grayson, Hardin, Meade, Breckinridge, Hancock, Daviess, Ohio, McLean, Muhlenberg, Todd, Christian, Trigg, Lyon, Caldwell, Livingston, Crittenden, Hopkins, Webster, Henderson, Union, Marshall, Calloway, McCracken, Graves, Ballard, Carlisle, Hickman, and Fulton, with the waters thereof. Terms of the district court for the western district shall be held at Louisville on the second Mondays in March and October; at Owensboro on the first Monday in May and the fourth Monday in November; at Paducah on the third Mondays in April and November; and at Bowling Green on the third Monday in May and the second Monday in December. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Frankfort, at Covington, at Richmond, at

London, at Catlettsburg, and at Jackson; and the clerk for the western district shall maintain an office in charge of himself or a deputy at Louisville, at Owensboro, at Paducah, and at Bowling Green, each of which offices shall be kept open at all times for the transaction of the business of said court. The clerks of the courts for the eastern and western districts, upon issuing original process in a civil action, shall make it returnable to the court nearest to the county of the residnce of the defendant, or of that defendant whose county is nearest to a court, and shall, immediately upon payment by the plaintiff of his fees accrued, send the papers filed to the clerk of the court to which the process is made returnable; and whenever the process is not thus made returnable, any defendant may, upon motion, on or before the calling of the cause, have it transferred to the court to which it should have been sent had the clerk known the residence of the defendant when the action was brought.

Annotated, our § 115 note n.

§ 84. The state of Louisiana is divided into two judicial districts, to be known as the eastern and western districts of Louisiana. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the parishes of Assumption, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint James, Saint John the Baptist, Saint Mary, Saint Tammany, Tangipahoa, Terrebonne, and Washington, which shall constitute the New Orleans division; also the territory embraced on the date last mentioned in the parishes of Ascension, East Baton Rouge, East Feliciana, Livingston, Pointe Coupee, Saint Helena, West Baton Rouge, Iberville, and West Feliciana, which shall constitute the Baton Rouge division of said district. Terms of the district court for the New Orleans division shall be held at New Orleans on the third Mondays in February, May, and November; and for the Baton Rouge division, at Baton Rouge on the second Mondays in April and November. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at New Orleans and at Baton Rouge which shall be kept open at all times for the transaction of the business of the court. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the parishes of Saint Landry, Evangeline, Sant Martin, Lafayette, and Vermilion, which shall constitute the Opelousas division of said district; also the territory embraced on the date last mentioned in the parishes of Rapides, Avoyelles, Catahoula, La Salle, Grant, and Winn, which shall constitute the Alexandria division of said district; also the territory embraced on the said date last mentioned in the parishes of Caddo, De Soto, Bossier, Webster, Claiborne, Bienville, Natchitoches, Sabine, and Red River, which shall constitute the Shreveport division of said district; also the territory embraced on the date last mentioned in the parishes of Ouachita, Franklin, Richland, Morehouse, East Carroll, West Carroll, Madison, Tensas, Concordia, Union, Caldwell, Jackson, and Lincoln, which shall constitute the Monroe division of said district; also the territory embraced on the date last mentioned in the parishes of Acadia, Calcasieu, Cameron, and Vernon, which shall constitute the Lake Charles division of said district. Terms of the district court for the Opelousas division shall be held at Opelousas on the first Mondays in January and June; for the Alexandria division, at Alexan-

dria on the fourth Mondays in January and June; for the Shreveport division, at Shreveport on the third Mondays in February and October; for the Monroe division, at Monroe on the first Mondays in April and October; and for the Lake Charles division, at Lake Charles on the third Mondays in May and December. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Opelousas, at Alexandria, at Shreveport, at Monroe, and at Lake Charles, which shall be kept open at all times for the transaction of the business of the court.

Annotated, our § 166 note m.

§ 85. The state of Maine shall constitute one judicial district, to be known as the district of Maine. Terms of the district court shall be held at Portland on the first Tuesdays in February and December; at Bangor on the first Tuesday in June; and at Bath on the first Tuesday in September.

Annotated, our § 117 note o, as amended, Act Dec. 22, 1911, ch. 7. See our § 117.

§ 86. The state of Maryland shall constitute one judicial district, to be known as the district of Maryland. Terms of the district court shall be held at Baltimore on the first Tuesdays in March, June, September, and December; and at Cumberland on the second Monday in May and the last Monday in September. The clerk of the court shall appoint a deputy who shall reside and maintain an office at Cumberland, unless the clerk shall himself reside there; and the marshal shall also appoint a deputy, who shall reside and maintain an office at Cumberland, unless he shall himself reside there.

Annotated, our § 118 note p.

§ 87. The state of Massachusetts shall constitute one judicial district, to be known as the district of Massachusetts. Terms of the district court shall be held at Boston on the third Tuesday in March, the fourth Tuesday in June, the second Tuesday in September, and the first Tuesday in December; and at Springfield, on the second Tuesdays in May and December: *Provided*, That suitable rooms and accommodations for holding court at Springfield shall be frunished free of expense to the government until such time as a Federal building shall be erected there for that purpose. The marshal and the clerk for said district shall each appoint at least one deputy, to reside in Springfield and to maintain an office at that place.

Annotated, our § 119 note q.

§ 88. The state of Michigan is divided into two judicial districts, to be known as the eastern and western districts of Michigan. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alcona, Alpena, Arenac, Bay, Cheboygan, Clare, Crawford, Genesee, Gladwin, Gratiot, Huron, Iosco, Isabella, Midland, Montmorency, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw, Shiawassee, and Tuscola, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Branch, Calhoun, Clinton, Hillsdale, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Sanilac, Washtenaw, and Wayne, which shall constitute the southern division of said district. Terms of the district court for the southern division shall be held at Detroit on the first Tuesdays in March, June, and November; for the northern division, at Bay City

on the first Tuesdays in May and October, and at Port Huron in the discretion of the judge of said court and at such times as he shall appoint therefor. There shall also be held a special or adjourned term of the district court at Bay City for the hearing of admiralty causes, beginning in the month of February in each year. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft, which shall constitute the northern division; also the territory embraced on the said date last mentioned in the counties of Allegan, Antrim, Barry, Benzie, Berrien, Cass, Charlevoix, Eaton, Emmett, Grand Traverse, Ionia, Kalamazoo, Kalkaska, Kent, Lake, Leelenau, Manistee, Mason, Mecosta, Missaukee, Montcalm, Muskegon, Newaygo, Oceana, Osceola, Ottawa, St. Joseph, Van Buren, and Wexford, which shall constitute the southern division of said district. Terms of the district court for the southern division shall be held at Grand Rapids on the first Tuesdays in March and October; and for the northern division, at Marquette on the first Tuesdays in May and September. All issues of fact shall be tried at the terms held in the division where such suit shall be commenced. Actions *in rem* and admiralty may be brought in whichever division of the eastern district service can be had upon the *res*. Nothing herein contained shall prevent the district court of the western division from regulating, by general rule, the venue of transitory actions either at law or in equity, or from changing the same for cause. The clerk of the court for the western district shall reside and keep his office at Grand Rapids, and shall also appoint a deputy clerk for said court held at Marquette, who shall reside and keep his office at that place. The marshal for said western district shall keep an office and a deputy marshal at Marquette. The clerk of the court for the eastern district shall keep his office at the city of Detroit, and shall appoint a deputy for the court held at Bay City, who shall reside and keep his office at that place. The marshal for said district shall keep an office and a deputy marshal at Bay City, and mileage on service of process in said northern division shall be computed from Bay City.

Annotated, our § 120 note r, as amended July 9, 1912, ch. 222. See our § 120.

§ 89. The state of Minnesota shall constitute one judicial district, to be known as the district of Minnesota. It is divided into six divisions, to be known as the first, second, third, fourth, fifth and sixth divisions. The first division shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Winona, Wabasha, Olmsted, Dodge, Steele, Mower, Fillmore, and Houston. The second division shall include the territory embraced on the date last mentioned in the counties of Freeborn, Faribault, Martin, Jackson, Nobles, Rock, Pipestone, Murray, Cottonwood, Watonwan, Blue Earth, Waseca, Lesueur, Nicollet, Brown, Redwood, Lyon, Lincoln, Yellow Medicine, Sibley, and Lac qui Parle. The third division shall include the territory embraced on the date last mentioned in the counties of Chisago, Washington, Ramsey, Dakota, Goodhue, Rice, and Scott. The fourth division shall include the territory embraced on the date last mentioned in the counties of Hennepin, Wright, Meeker, Kandiyohi, Swift,

Chippewa, Renville, McLeod, Carver, Anoka, Sherburne, and Isanti. The fifth division shall include the territory embraced on the date last mentioned in the counties of Cook, Lake, Saint Louis, Itasca, Koochiching, Cass, Crow Wing, Aitkin, Carlton, Pine, Kanabec, Mille Lacs, Morrison, and Benton. The sixth division shall include the territory embraced on the date last mentioned in the counties of Stearns, Pope, Stevens, Bigstone, Traverse, Grant, Douglas, Todd, Ottertail, Roseau, Wilkin, Clay, Becker, Wadena, Norman, Polk, Red Lake, Marshall, Kittson, Beltrami, Clearwater, Mahnomen, and Hubbard. Terms of the district court for the first division shall be held at Winona on the third Tuesdays in May and November; for the second division, at Mankato on the fourth Tuesdays in April and October; for the third division, at Saint Paul on the first Tuesdays in June and December; for the fourth division, at Minneapolis on the first Tuesdays in April and October; for the fifth division, at Duluth on the second Tuesdays in January and July; and for the sixth division, at Fergus Falls on the first Tuesday in May and second Tuesday in November. The clerk of the court shall appoint a deputy clerk at each place where the court is now required to be held at which the clerk shall not himself reside, who shall keep his office and reside at the place appointed for the holding of said court.

Annotated, our § 121 note s.

§ 90. The state of Mississippi is divided into two judicial districts, to be known as the northern and southern districts of Mississippi. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alcorn, Attala, Chickasaw, Choctaw, Clay, Itawamba, Lee, Lowndes, Monroe, Oktibbeha, Pontotoc, Prentiss, Tishomingo, and Winston, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Benton, Coahoma, Calhoun, Carroll, De Soto, Grenada, Lafayette, Marshall, Montgomery, Panola, Quitman, Tallahatchie, Tate, Tippah, Tunica, Union, Webster, and Yalobusha, which shall constitute the western division of said district. Terms of the district court for the eastern division shall be held at Aberdeen on the first Mondays in April and October; and for the western division, at Oxford on the first Mondays in June and December, and at Clarksdale on the third Mondays in June and December: *Provided*, That suitable rooms and accommodations for holding court at Clarksdale are furnished free of expense to the United States. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adams, Amite, Copiah, Covington, Franklin, Hinds, Holmes, Jefferson, Jefferson Davis, Lawrence, Lincoln, Leflore, Madison, Pike, Rankin, Simpson, Smith, Scott, Wilkinson, and Yazoo, which shall constitute the Jackson division; also the territory embraced on the date last mentioned in the counties of Bolivar, Claiborne, Issaquena, Sharkey, Sunflower, Warren, and Washington, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Clarke, Jones, Jasper, Kemper, Lauderdale, Leake, Neshoba, Newton, Noxubee, and Wayne, which shall constitute the eastern division; also the territory embraced on the date last mentioned in the counties of Forest, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Perry, and Pearl River, which constitutes the southern division of said district. Terms of the district court for the

Jackson division shall be held at Jackson on the first Mondays in May and November; for the western division, at Vicksburg on the first Mondays in January and July; for the eastern division, at Meridian on the second Mondays in March and September; and for the southern division, at Biloxi on the third Mondays in February and August. The clerk of the court for each district shall maintain an office in charge of himself or a deputy at each place in his district at which court is now required to be held, at which he shall not himself reside, which shall be kept open at all times for the transaction of the business of the court. The marshal for each of said districts shall maintain an office in charge of himself or a deputy at each place of holding court in his district.

Annotated, our § 122 note t, as amended May 27, 1912, ch. 136. See our § 122.

§ 91. The state of Missouri is divided into two judicial districts, to be known as the eastern and western districts of Missouri. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the city of Saint Louis and the counties of Audrian, Crawford, Dent, Franklin, Gasconade, Iron, Jefferson, Lincoln, Maries, Montgomery, Phelps, Saint Charles, Saint Francois, Sainte Genevieve, Saint Louis, Warren, and Washington, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Adair, Chariton, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Pike, Ralls, Randolph, Schuyler, Scotland, and Shelby, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Scott, Shannon, Stoddard, and Wayne, which shall constitute the southeastern division of said district. Terms of the district court for the eastern division shall be held at Saint Louis on the first Mondays in May and November, and at Rolla on the second Mondays in January and June: *Provided*, That suitable rooms and accommodations for holding court at Rolla are furnished free of expense to the United States; for the northern division, at Hannibal on the fourth Monday in May and the first Monday in December; and for the southeastern division, at Cape Girardeau on the second Mondays in April and October. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bates, Caldwell, Carroll, Cass, Clay, Grundy, Henry, Jackson, Johnson, Lafayette, Livingston, Mercer, Putnam, Ray, Saint Clair, Saline, and Sullivan, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Barton, Barry, Jasper, Lawrence, McDonald, Newton, Stone, and Vernon, which shall constitute the southwestern division; also the territory embraced on the date last mentioned in the counties of Andrew, Atchison, Buchanan, Clinton, Daviess, Dekalb, Gentry, Holt, Harrison, Nodaway, Platte, and Worth, which shall constitute the Saint Joseph division; also the territory embraced on the date last mentioned in the counties of Benton, Boone, Callaway, Cooper, Camden, Cole, Hickory, Howard, Miller, Moniteau, Morgan, Osage, and Pettis, which shall constitute the central division; also the territory embraced on the date last mentioned in the counties of Christian, Cedar, Dade, Dallas, Douglas,

Greene, Howell, Laclede, Oregon, Ozark, Polk, Pulaski, Taney, Texas, Webster, and Wright, which constitutes the southern division. Terms of the district court for the western division shall be held at Kansas City on the fourth Monday in April and first Monday in November, and at Chillicothe on the fourth Monday in May and the first Monday in December: *Provided,* That suitable rooms and accommodations for holding court at Chillicothe are furnished free of expense to the United States; for the southwestern division, at Joplin on the second Mondays in June and January; for the Saint Joseph division, at Saint Joseph on the first Monday in March and third Monday in September; for the central division, at Jefferson City on the third Mondays in March and October; and for the southern division, at Springfield on the first Mondays in April and October. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Kansas City, at Jefferson City, at Saint Joseph, at Chillicothe, at Joplin, and at Springfield, which shall be kept open at all times for the transaction of the business of the court. The marshal for each district shall also maintain an office in charge of himself or a deputy at each place at which court is now held in his district.

Annotated, our § 123 note v, as amended Dec. 22, 1911, ch. 8.

See our § 123.

§ 92. The state of Montana shall constitute one judicial district, to be known as the district of Montana. Terms of the district court shall be held at Helena on the first Mondays in April and November; at Butte on the first Tuesdays in February and September; at Great Falls on the first Mondays in May and October; at Missoula on the first Mondays in January and June; and at Billings on the first Mondays in March and August. Causes, civil and criminal, may be transferred by the court or judge thereof from Helena to Butte or from Butte to Helena, or from Helena or Butte to Great Falls, or from Great Falls to Helena or Butte, in said district, when the convenience of the parties or the ends of justice would be promoted by the transfer; and any interlocutory order may be made by the court or judge thereof in either place.

Annotated, our § 124 note v.

§ 93. The state of Nebraska shall constitute one judicial district, to be known as the district of Nebraska. Said district is divided into eight divisions. The territory embraced on the first day of July, nineteen hundred and ten, in the counties of Douglas, Sarpy, Washington, Dodge, Colfax, Platte, Nance, Boone, Wheeler, Burt, Thurston, Dakota, Cuming, Cedar, and Dixon, shall constitute the Omaha division; the territory embraced on the date last mentioned in the counties of Madison, Antelope, Knox, Pierce, Stanton, Wayne, Holt, Boyd, Rock, Brown, and Keya Paha, shall constitute the Norfolk division; the territory embraced on the date last mentioned in the counties of Cherry, Sheridan, Dawes, Box Butte, and Sioux, shall constitute the Chadron division; the territory embraced on the date last mentioned in the counties of Hall, Merrick, Howard, Greeley, Garfield, Valley, Sherman, Buffalo, Custer, Loup, Blaine, Thomas, Hooker, and Grant, shall constitute the Grand Island division; the territory embraced on the date last mentioned in the counties of Lincoln, Lawson, Logan, McPherson, Keith, Deuel, Garden, Morrill, Cheyenne, Kimball, Banner, and Scott's Bluff, shall con-

stitute the North Platte division; the territory embraced on the date last mentioned in the counties of Cass, Otoe, Johnson, Nemaha, Pawnee, Richardson, Gage, Lancaster, Saunders, Butler, Seward, Saline, Jefferson, Thayer, Fillmore, York, Polk, and Hamilton, shall constitute the Lincoln division; the territory embraced on the date last mentioned in the counties of Clay, Nuckolls, Webster, Adams, Kearney, Franklin, Harlan, and Phelps, shall constitute the Hastings division; and the territory embraced on the date last mentioned in the counties of Gosper, Furnas, Red Willow, Frontier, Hayes, Hitchcock, Dundy, Chase, and Perkins, shall constitute the McCook division. Terms of the district court for the Omaha division shall be held at Omaha on the first Monday in April and the fourth Monday in September; for the Norfolk division, at Norfolk on the third Monday in September; for the Chadron division, at Chadron on the second Monday in September; for the Grand Island division, at Grand Island on the second Monday in January; for the North Platte division, at North Platte on the second Monday in June; for the Lincoln division, at Lincoln on the second Monday in May and the first Monday in October; for the Hastings division, at Hastings on the second Monday in March; and for the McCook division, at McCook on the first Monday in March: *Provided*, That where provision is made herein for holding court at places where there are no Federal buildings, a suitable room in which to hold court, together with light and heat, shall be provided by the city or county where such court is held, without any expense to the United States. The clerk of the court shall appoint a deputy for each division of the district in which he does not himself reside, who shall keep his office and reside at the place of holding court in the division for which he is appointed.

Annotated, our § 125 note w.

§ 94. The state of Nevada shall constitute one judicial district, to be known as the district of Nevada. Terms of the district court shall be held at Carson City on the first Mondays in February, May, and October.

Annotated, our § 126 note x.

§ 95. The state of New Hampshire shall constitute one judicial district, to be known as the district of New Hampshire. Terms of the district court shall be held at Portsmouth on the third Tuesdays in March and September; at Concord on the third Tuesdays in June and December; and at Littleton on the last Tuesday in August.

Annotated, our § 127 note y, as amended Aug. 23, 1912, ch. 344.

See our § 127.

§ 96. The state of New Jersey shall constitute one judicial district, to be known as the district of New Jersey. Terms of the district court shall be held at Trenton on the third Tuesdays in January, April, June, and September. At each term of the district court it shall be lawful for the judge holding such term, on consent of both parties, or on application therefor and good cause shown by either party to any civil cause set for trial or hearing at said term, to order such cause to be held or tried at the city of Newark, in said district, upon the day set for that purpose by said judge: *Provided*, That such application shall be made to said judge, either in vacation or term time, at least one week before the date set for trial of said cause, and on at least five days' notice to the opposite party or his or her attorney;

and writs of subpœna to compel the attendance of witnesses at said city of Newark may issue, and jurors summoned to attend said term may be ordered by said judge to be in attendance upon said court in the city of Newark.

Annotated, our § 128 note z, as amended Feb. 14, 1912, ch. 53.

See our § 128.

§ 97. The state of New York is divided into four judicial districts, to be known as the northern, eastern, southern, and western districts of New York. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Albany, Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, Saint Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Warren, and Washington, with the waters thereof. Terms of the district court for said district shall be held at Albany on the second Tuesday in February; at Utica on the first Tuesday in December; at Binghamton on the second Tuesday in June; at Auburn on the first Tuesday in October; at Syracuse on the first Tuesday in April; and, in the discretion of the judge of the court, one term annually at such time and place within the counties of Saratoga, Onondaga, Saint Lawrence, Clinton, Jefferson, Oswego, and Franklin, as he may from time to time appoint. Such appointment shall be made by notice of a least twenty days published in a newspaper published at the place where said court is to be held. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Richmond, Kings, Queens, Nassau, and Suffolk, with the waters thereof. Terms of the district court for said district shall be held at Brooklyn on the first Wednesday in every month. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Columbia, Dutchess, Greene, New York, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester, with the waters thereof. Terms of the district court for said district shall be held at New York City on the first Tuesday in each month. The district courts of the southern and eastern districts shall have concurrent jurisdiction over the waters within the counties of New York, Kings, Queens, Nassau, Richmond, and Suffolk, and over all seizures made and all matters done in such waters; all processes or orders issued within either of said courts or by any judge thereof shall run and be executed in any part of said waters. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates, with the waters thereof. Terms of the district court for said district shall be held at Elmira on the second Tuesday in January; at Buffalo on the second Tuesdays in March and November; at Rochester on the second Tuesday in May; at Jamestown on the second Tuesday in July; at Lockport on the second Tuesday in October; and at Canandaigua on the second Tuesday in September. The regular sessions of the district court for the western district for the hearing of motions and for proceedings in bankruptcy and the trial of causes in admiralty, shall be held at Buffalo at least two weeks in each month of the year, except August, unless the business is sooner

disposed of. The times for holding the same and such other special sessions as the court shall deem necessary shall be fixed by rules of the court. All process in admiralty causes and proceedings shall be made returnable at Buffalo. The judge of any district in the state of New York may perform the duties of the judge of any other district in such state upon the request of any resident judge entered in the minutes of his court; and in such cases such judge shall have the same powers as are vested in the resident judge.

Annotated, our § 130 note a.

§ 98. The state of North Carolina is divided into two districts, to be known as the eastern and western districts of North Carolina. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Beaufort, Bertie, Bladen, Brunswick, Camden, Chatham, Cumberland, Currituck, Craven, Columbus, Chowan, Carteret, Dare, Duplin, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Lee, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Robeson, Richmond, Sampson, Scotland, Tyrell, Vance, Wake, Warren, Washington, Wayne, and Wilson. Terms of the district court for the eastern district shall be held at Elizabeth City on the second Mondays in April and October; at Washington on the third Mondays in April and October; at Newbern on the fourth Mondays in April and October; at Wilmington on the second Monday after the fourth Mondays in April and October; and at Raleigh on the fourth Monday after the fourth Mondays in April and October: *Provided*, That the city of Washington shall provide and furnish at its own expense a suitable and convenient place for holding the district court at Washington until a courthouse shall be constructed by the United States. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Raleigh, at Wilmington, at Newbern, at Elizabeth City, and at Washington which shall be kept open at all times for the transaction of the business of the court. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alamance, Alexander, Ashe, Alleghany, Anson, Buncombe, Burke, Caswell, Cabarrus, Catawba, Cleveland, Caldwell, Clay, Cherokee, Davidson, Davie, Forsyth, Guilford, Gaston, Graham, Henderson, Haywood, Iredell, Jackson, Lincoln, Montgomery, Mecklenburg, Mitchell, McDowell, Madison, Macon, Orange, Polk, Randolph, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Swain, Transylvania, Union, Wilkes, Watauga, Yadkin, and Yancey. Terms of the district court for the western district shall be held at Greensboro on the first Mondays in June and December; at Statesville on the third Mondays in April and October; at Salesbury on the fourth Mondays in April and October; at Asheville on the first Mondays in May and November; at Charlotte on the first Mondays in April and October; and at Wilkesboro on the fourth Mondays in May and November. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Greensboro, at Asheville, at Statesville, and at Wilkesboro, which shall be kept open at all times for the transaction of the business of the court.

Annotated, our § 131 note b.

§ 99. The state of North Dakota shall constitute one judicial district, to be known as the district of North Dakota. The territory embraced on the first day of July, nineteen hundred and ten, in the counties of Burleigh, Stutsman, Logan, McIntosh, Emmons, Kidder, Foster, Wells, McLean, and Sheridan, and all the territory in said state lying west of the Missouri River and south of the twelfth standard parallel, shall constitute the southwestern division of said district; and the territory embraced on the date last mentioned in the counties of Cass, Richland, Barnes, Dickey, Sargent, Lamoure, Ransom, Griggs, and Steele, shall constitute the southeastern division; and the territory embraced on the date last mentioned in the counties of Grand Forks, Traill, Walsh, Pembina, Cavalier, and Nelson, shall constitute the northeastern division; and the territory embraced on the date last mentioned in the counties of Ramsey, Eddy, Benson, Towner, Rolette, Bottineau, Pierce, and McHenry, shall constitute the northwestern division; and the territory embraced on the date last mentioned in the counties of Ward, Williams, and Montraille, and all the territory in said state lying west of the Missouri River, and north of the twelfth standard parallel, shall constitute the western division. The several Indian reservations and parts thereof within said state shall constitute a part of the several divisions within which they are respectively situated. Terms of the district court for the southwestern division shall be held at Bismarck on the first Tuesday in March; for the southeastern division, at Fargo on the third Tuesday in May; for the northeastern division, at Grand Forks on the second Tuesday in November; for the northwestern division, at Devils Lake on the first Tuesday in July; and for the western division, at Minot on the second Tuesday in October. The clerk of the court shall maintain an office in charge of himself or a deputy at each place at which court is now held in his district.

Annotated, our § 132 note c, as amended Feb. 5, 1912, ch. 28.

See our § 132.

§ 100. The state of Ohio is divided into two judicial districts, to be known as the northern and southern districts of Ohio. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Ashland, Ashtabula, Cuyahoga, Carroll, Columbiana, Crawford, Geauga, Holmes, Lake, Lorain, Medina, Mahoning, Portage, Richland, Summit, Stark, Tuscarawas, Trumbull, and Wayne, which shall constitute the eastern division; also the territory embraced on the date last mentioned in the counties of Auglaize, Allen, Defiance, Erie, Fulton, Henry, Hancock, Hardin, Huron, Lucas, Mercer, Marion, Ottawa, Paulding, Putnam, Seneca, Sandusky, Van Wert, Williams, Wood, and Wyandotte, which shall constitute the western division of said district. Terms of the district court for the eastern division shall be held at Cleveland on the first Tuesdays in February, April, and October, and at Youngstown on the first Tuesday after the first Monday in March; and for the western division, at Toledo on the last Tuesdays in April and October. Grand and petit jurors summoned for service at a term of court to be held at Cleveland may, if in the opinion of the court the public convenience so requires, be directed to serve also at the term then being held or authorized to be held at Youngstown. Crimes and offenses committed in the eastern division shall be cognizable at the terms held at Cleveland, or at Youngstown, as the court may direct. Any

suit brought in the eastern division may, in the discretion of the court, be tried at the term held at Youngstown. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Lawrence, Miami, Montgomery, Preble, Scioto, Shelby, and Warren, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Athens, Belmont, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Knox, Licking, Logan, Madison, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Union, Vinton, and Washington, which shall constitute the eastern division of said district. Terms of the district court for the western division shall be held at Cincinnati on the first Tuesdays in February, April, and October; and for the eastern division, at Columbus on the first Tuesdays in June and December: *Provided*, That terms of the district court for the southern district shall be held at Dayton on the first Mondays in May and November. Prosecutions for crimes and offenses committed in any part of said district shall also be cognizable at the terms held at Dayton. All suits which may be brought within the southern district, or either division thereof, may be instituted, tried, and determined at the terms held at Dayton.

Annotated, our § 133 note d.

§ 101. The state of Oklahoma is divided into two judicial districts, to be known as the eastern and the western districts of Oklahoma. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adair, Atoka, Bryan, Craig, Cherokee, Creek, Choctaw, Coal, Carter, Delaware, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, Le Flore, Love, McClain, Mayes, Muskogee, McIntosh, McCurtain, Murray, Marshall, Nowata, Ottawa, Okmulgee, Ofuskee, Pittsburg, Pushmataha, Pontotoc, Rogers, Stephens, Sequoyah, Seminole, Tulsa, Washington, and Wagoner. Terms of the district court for the eastern district shall be held at Muskogee on the first Monday in January; at Vinita on the first Monday in March; at Tulsa on the first Monday in April; at South McAlester on the first Monday in June; at Ardmore on the first Monday in October; and at Chickasha on the first Monday in November in each year. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Majors, Noble, Oklahoma, Osage, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward. Terms of the district court for the western district shall be held at Guthrie on the first Monday in January; at Oklahoma City on the first Monday in March; at Enid on the first Monday in June; at Lawton on the first Monday in September; and at Woodward on the first Monday in November: *Provided*, That suitable rooms and accommodations for holding court at Woodward are furnished free of expense to the United States. The clerk of the district court for the eastern district shall keep his office at Muskogee, and the clerk for the western district at Guthrie, and shall maintain an office in charge of himself or a deputy at Oklahoma City.

Annotated, our § 134 note e.

§ 102. The state of Oregon shall constitute one judicial district, to be known as the district of Oregon. Terms of the district court shall be held at Portland on the first Mondays in March, July, and November; at Pendleton on the first Tuesday in April; and at Medford on the first Tuesday in October. The marshal and the clerk for said district shall each appoint, in the manner provided by law, at least one deputy at Pendleton and one at Medford, who shall reside and maintain an office at each of said places.

Annotated, our § 135 note f.

§ 103. The state of Pennsylvania is divided into three judicial districts, to be known as the eastern, middle, and western districts of Pennsylvania. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton, Philadelphia, and Schuylkill. Terms of the district court shall be held at Philadelphia on the second Mondays in March and June, the third Monday in September, and the second Monday in December, each term to continue until the succeeding term begins. The middle district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adams, Bradford, Cameron, Carbon, Center, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lebanon, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York. Terms of the district court shall be held at Scranton on the fourth Monday in February and the third Monday in October; at Harrisburg on the first Mondays in May and December; and at Williamsport on the second Mondays in January and June. The clerk of the court for the middle district shall maintain an office in charge of himself or a deputy at Harrisburg; and civil suits instituted at that place shall be tried there, if either party resides nearest that place of holding court, unless by consent of parties they are removed to another place of trial. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland. Terms of the district court shall be held at Pittsburg on the first Monday in May and the third Monday in October; and at Erie on the third Monday in July and the second Monday in January.

Annotated, our § 136 note g, amended Mch. 3, 1913, ch. 113.

See our § 136.

§ 104. The state of Rhode Island shall constitute one judicial district, to be known as the district of Rhode Island. Terms of the district court shall be held at Providence on the fourth Tuesday in May and the third Tuesday in November; and at Newport on the second Tuesday in May and the third Tuesday in October.

Annotated, our § 137 note h, as amended Feb. 1, 1912, ch. 27.

See our § 137.

§ 105. The state of South Carolina is divided into two districts, to be known as the eastern and western districts of South Carolina. The western district shall include the territory embraced on the first day of July, nine-

teen hundred and ten, in the counties of Abbeville, Anderson, Cherokee, Chester, Edgefield, Fairfield, Greenville, Greenwood, Lancaster, Laurens, Newberry, Oconee, Pickens, Saluda, Spartansburg, Union, and York. Terms of the district court for the western district shall be held at Greenville on the third Tuesdays in April and October. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Aiken, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chesterfield, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Hampton, Horry, Kershaw, Lee, Lexington, Marion, Marlboro, Orangeburg, Richland, Sumter, and Williamsburg. Terms of the district court for the eastern district shall be held at Charleston on the first Tuesdays in June and December; at Columbia on the third Tuesday in January and the first Tuesday in November, the latter term to be solely for the trial of civil cases; and at Florence on the first Tuesday in March. The offices of the clerk of the district court shall be at Greenville, and at Charleston; and the clerk shall reside in one of said cities and have a deputy in the other.

Annotated, our § 138 note i, as amended Feb. 5, 1912, ch. 28.

See our § 138.

§ 106. The state of South Dakota shall constitute one judicial district, to be known as the district of South Dakota. The territory embraced on the first day of July, nineteen hundred and ten, in the counties of Aurora, Beadle, Bon Homme, Brookings, Brule, Charles Mix, Clay, Davison, Douglas, Gregory, Hanson, Hutchinson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, and Yankton, and in the Yankton Indian reservation, shall constitute the southern division of said district; the territory embraced on the date last mentioned in the counties of Brown, Campbell, Clark, Codington, Corson, Day, Deuel, Edmunds, Grant, Hamlin, McPherson, Marshall, Roberts, Schnasse, Spink, and Walworth, and in the Sisseton and Wahpeton Indian reservation, and in that portion of the Standing Rock Indian reservation lying in South Dakota, shall constitute the northern division; the territory embraced on the date last mentioned in the counties of Armstrong, Buffalo, Dewey, Faulk, Hand, Hughes, Hyde, Jerauld, Lyman, Potter, Stanley, and Sully, and in the Cheyenne River, Lower Brule, and Crow Creek Indian reservations, shall constitute the central division; and the territory embraced on the date last mentioned in the counties of Bennett, Butte, Custer, Fall River, Harding, Lawrence, Meade, Mellette, Pennington, Perkins, Shannon, Todd, Tripp, Washabaugh, and Washington, and in the Rosebud and Pine Ridge Indian reservations, shall constitute the western division. Terms of the district court for the southern division shall be held at Sioux Falls on the first Tuesday in April and the third Tuesday in October; for the northern division, at Aberdeen on the first Tuesday in May and the second Tuesday in November; for the central division, at Pierre on the second Tuesday in June and the first Tuesday in October; and for the western division, at Deadwood on the third Tuesday in May and the first Tuesday in September. The clerk of the district court shall maintain an office in charge of himself or a deputy at Sioux Falls, at Pierre, at Aberdeen, and at Deadwood, which shall be kept open for the transaction of the business of the court.

Annotated, our § 139 note j.

§ 107. The state of Tennessee is divided into three districts, to be known as the eastern, middle, and western districts of Tennessee. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bledsoe, Bradley, Hamilton, James, McMinn, Marion, Meigs, Polk, Rhea, and Sequatchie, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Anderson, Blount, Campbell, Claiborne, Grainger, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Sevier, Scott, and Union, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Carter, Cocke, Greene, Hamblen, Hancock, Hawkins, Johnson, Sullivan, Unicoi, and Washington, which shall constitute the northeastern division of said district. Terms of the district court for the southern division of said district shall be held at Chattanooga on the fourth Mondays in May and November; for the northern division at Knoxville on the first Mondays in January and July; and for the northeastern division, at Greeneville on the last Mondays in March and September. The middle district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Grundy, Hickman, Humphreys, Houston, Lawrence, Lewis, Lincoln, Marshall, Maury, Montgomery, Moore, Robertson, Rutherford, Stewart, Sumner, Trousdale, Warren, Wayne, Williamson, and Wilson, which shall constitute the Nashville division of said district; also the territory embraced on the date last mentioned in the counties of Clay, Cumberland, DeKalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith, Van Buren, and White, which shall constitute the northeastern division of said district. Terms of the district court for the Nashville division of said district shall be held at Nashville on the second Mondays in April and October; and for the northeastern division, at Cookeville on the second Mondays in May and November: *Provided*, That suitable accommodations for holding court at Cookeville shall be provided by the county or municipal authorities without expense to the United States. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Dyer, Fayette, Haywood, Lauderdale, Shelby, and Tipton, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Benton, Carroll, Chester, Crockett, Decatur, Gibson, Hardeman, Hardin, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry, and Weakley, including the waters of the Tennessee River to low-water mark on the eastern shore thereof wherever such river forms the boundary line between the western and middle districts of Tennessee, from the north line of the state of Alabama north to the point in Henry County, Tennessee, where the south boundary line of the state of Kentucky strikes the west bank of the river, which shall constitute the eastern division of said district. Terms of the district court for the western division of said district shall be held at Memphis on the fourth Mondays in May and November; and for the eastern division, at Jackson on the fourth Mondays in April and October. The clerk of the court for the western district shall appoint a deputy who shall reside at Jackson. The marshal for the western district shall appoint a deputy who shall reside at Jackson. The marshal for the eastern district

shall appoint a deputy who shall reside at Chattanooga. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Knoxville, at Chattanooga, and at Greeneville, which shall be kept open at all times for the transaction of the business of the court.

Annotated, our § 140 note k, as amended Aug. 20, 1912, ch. 306.

See our § 140.

§ 108. The state of Texas is divided into four districts, to be known as the northern, eastern, western, and southern districts of Texas. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Dallas, Ellis, Hunt, Johnson, Kaufman, Navarro, and Rockwall, which shall constitute the Dallas division; also the territory embraced on the date last mentioned in the counties of Archer, Baylor, Clay, Comanche, Erath, Foard, Hardeman, Hood, Jack, Palo Pinto, Parker, Tarrant, Wichita, Wilbarger, Wise, and Young, which shall constitute the Fort Worth division; also the territory embraced on the date last mentioned in the counties of Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, King, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler, which shall constitute the Amarillo division; also the territory embraced on the date last mentioned in the counties of Andrews, Borden, Callahan, Dawson, Eastland, Fisher, Gaines, Garza, Haskell, Howard, Jones, Kent, Knox, Lynn, Martin, Midland, Mitchell, Nolan, Scurry, Shackelford, Stephens, Stonewall, Taylor, Terry, Throckmorton, and Yoakum, which shall constitute the Abilene division; also the territory embraced on the date last mentioned in the counties of Brown, Coke, Coleman, Concho, Crockett, Glasscock, Irion, Menard, Mills, Runnels, Schleicher, Sterling, Sutton, Tom Green, and Upton, which shall constitute the San Angelo division of the said district. Terms of the district court for the Dallas division shall be held at Dallas on the second Monday in January and the first Monday in May; for the Fort Worth division, at Fort Worth on the first Monday in November and the second Monday in March; for the Amarillo division, at Amarillo on the third Monday in April and the fourth Monday in September; for the Abilene division at Abilene on the first Monday in October and the second Monday in April; and for the San Angelo division, at San Angelo on the third Monday in October and the fourth Monday in April. The clerk of the court for the northern district shall maintain an office in charge of himself or a deputy at Dallas, at Fort Worth, at Amarillo, at Abilene, and at San Angelo, which shall be kept open at all times for the transaction of the business of the court. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Anderson, Angelina, Cherokee, Gregg, Henderson, Houston, Nacogdoches, Panola, Rains, Rusk, Smith, Van Zandt, and Wood, which shall constitute the Tyler division; also the territory embraced on the date last mentioned in the counties of Hardin, Jasper, Jefferson, Liberty, Newton, Orange, Sabine, San Augustine, Shelby, and Tyler, which shall constitute the Beaumont division; also the territory embraced on the date last mentioned in the counties of Collin, Cook, Denton, Grayson, and Montague, which shall constitute the Sherman division; also the territory

embraced on the date last mentioned in the counties of Camp, Cass, Harrison, Hopkins, Marion, Morris, and Upshur, which shall constitute the Jefferson division; also the territory embraced on the date last mentioned in the counties of Delta, Fannin, Red River, and Lamar, which shall constitute the Paris division; also the territory embraced on the date last mentioned in the counties of Bowie, Franklin, and Titus, which shall constitute the Texarkana division. Terms of the district court for the Tyler division shall be held at Tyler on the fourth Mondays in January and April; for the Jefferson division, at Jefferson on the first Monday in October and the third Monday in February; for the Beaumont division, at Beaumont on the third Monday in November and the first Monday in April; for the Sherman division, at Sherman on the first Monday in January and the third Monday in May; for the Paris division, at Paris on the third Monday in October and the first Monday in March; and for the Texarkana division at Texarkana on the third Monday in March and the first Monday in November. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Sherman, at Beaumont, and at Texarkana, which shall be kept open at all times for the transaction of the business of said court. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington, and Williamson, which shall constitute the Austin division; also the territory embraced on the date last mentioned in the counties of Atascosa, Bandera, Bexar, Comal, Dimmit, Edwards, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, and Wilson, which shall constitute the San Antonio division; also the territory embraced on the date last mentioned in the counties of Brewster, Crane, Ector, El Paso, Jeff Davis, Loving, Reeves, Presidio, Ward, and Winkler, which shall constitute the El Paso division; also the territory embraced on the date last mentioned in the counties of Bell, Bosque, Coryell, Falls, Hamilton, Freestone, Hill, Leon, Limestone, McLennan, Milam, Robertson, and Somervell, which shall constitute the Waco division; also the territory embraced on the date last mentioned in the counties of Kinney, Maverick, Pecos, Terrell, Uvalde, Valverde, and Zavalla, which shall constitute the Del Rio division. Terms of the district court for the Austin division shall be held at Austin on the fourth Monday in January and the second Monday in June; for the Waso division, at Waso on the fourth Monday in February and the second Monday in November; for the San Antonio division, at San Antonio on the first Monday in May and the third Monday in December; for the El Paso division, at El Paso on the first Monday in April and the first Monday in October; and for the Del Rio division, at Del Rio on the third Monday in March and the fourth Monday in October. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Austin, at El Paso, and at Del Rio, which shall be kept open at all times for the transaction of business. The southern district shall include the territory embraced on the first of July, nineteen hundred and ten, in the counties of Duval, La Salle, McMullen, Nueces, Webb, and Zapata, which shall constitute the Laredo division; also the territory embraced on the date last mentioned in the counties of Cameron, Hidalgo, and Starr, which shall con-

stitute the Brownsville division; also the territory embraced on the date last mentioned in the counties of Austin, Brazoria, Chambers, Galveston, Fort Bend, Matagorda, and Wharton, which shall constitute the Galveston division; also the territory embraced on the date last mentioned, in the counties of Brazos, Colorado, Fayette, Grimes, Harris, Lavaca, Madison, Montgomery, Polk, San Jacinto, Trinity, Walker, and Waller, which shall constitute the Houston division; also the territory embraced on the date last mentioned, in the counties of Bee, Calhoun, Dewitt, Goliad, Jackson, Live Oak, Refugio, Aransas, San Patricio, and Victoria, which shall constitute the Victoria division. Terms of the district court for the Galveston division shall be held at Galveston on the second Monday in January and the first Monday in June; for the Houston division, at Houston on the fourth Mondays in February and September; for the Laredo division, at Laredo on the third Monday in April and the second Monday in November; for the Brownsville division, at Brownsville on the second Monday in May and the first Monday in December; and for the Victoria division, at Victoria on the first Monday in May and the fourth Monday in November. The clerk of the court for the southern district shall maintain an office in charge of himself or a deputy at each of the places now designated for holding court in said district.

Annotated, our § 141 note l, as amended May 29, 1912, ch. 144, and Feb. 5, 1913, ch. 28. See our § 141.

§ 109. The state of Utah shall constitute one judicial district, to be known as the district of Utah. It is divided into two divisions, to be known as the northern and central divisions. The northern division shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Boxelder, Cache, Davis, Morgan, Rich, and Weber. The central division shall include the territory embraced on the date last mentioned in the counties of Beaver, Carbon, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Piute, Salt Lake, San Juan, San Pete, Sevier, Summit, Tooele, Uinta, Utah, Wasatch, Washington, and Wayne. Terms of the district court for the northern division shall be held at Ogden on the second Mondays in March and September; and for the central division, at Salt Lake City on the second Mondays in April and November. The clerk of the court for said district shall maintain an office in charge of himself or a deputy at each of the places where the court is now required to be held in the district.

Annotated, our § 142 note m.

§ 110. The state of Vermont shall constitute one judicial district, to be known as the district of Vermont. Terms of the district court shall be held at Burlington on the fourth Tuesday in February; at Windsor on the third Tuesday in May; and at Rutland on the first Tuesday in October. In each year one of the stated terms of the district court may, when adjourned, be adjourned to meet at Montpelier, and one at Newport.

Annotated, our § 143 note n, as amended, Act Feb. 1, 1912, ch. 26. See our § 143.

§ 111. The state of Virginia is divided into two districts, to be known as the eastern and western districts of Virginia. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Accomac, Alexandria, Amelia, Brunswick, Caroline, Charles City, Chesterfield, Culpepper, Dinwiddie, Elizabeth City, Essex, Fair-

fax, Fauquier, Gloucester, Goochland, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Orange, Powhatan, Prince Edward, Prince George, Prince William, Princess Anne, Richmond, Southampton, Spottsylvania, Stafford, Surry, Sussex, Warwick, Westmoreland, and York. Terms of the district court shall be held at Richmond on the first Mondays in April and October; at Norfolk on the first Mondays in May and November; and at Alexandria on the first Mondays in January and July. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alleghany, Albermarle, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Cumberland, Dickenson, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Madison, Montgomery, Nelson, Page, Patrick, Pulaski, Pittsylvania, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe. Terms of the district court shall be held at Lynchburg on the Tuesdays after the second Mondays in March and September; at Danville on the Tuesdays after the second Mondays in April and November; at Abingdon on the Tuesdays after the first Mondays in May and October; at Harrisonburg on the Tuesdays after the first Mondays in June and December; at Charlottesville on the second Monday in January and the first Monday in July; at Roanoke on the third Monday in February and the third Monday in June; and at Big Stone Gap on the fourth Monday in January and the second Monday in August. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Lynchburg, at Danville, at Charlottesville, at Roanoke, Abingdon, and at Big Stone Gap, which shall be kept open at all times for the transaction of the business of the court.

Annotated, our § 144 note o.

§ 112. The state of Washington is divided into two districts, to be known as the eastern and western districts of Washington. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Spokane, Stevens, Ferry, Okanogan, Chelan, Grant, Douglas, Lincoln, and Adams, with the waters thereof, including all Indian reservations within said counties, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Asotin, Garfield, Whitman, Columbia, Franklin, Walla Walla, Benton, Klickitat, Kittitas, and Yakima, with the waters thereof, including all Indian reservations within said counties, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Spokane on the first Tuesdays in April and September; for the southern division, at Walla Walla on the first Tuesdays in June and December, and at North Yakima on the first Tuesdays in May and October. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Whatcom, Skagit, Snohomish, King, San Juan, Island, Kitsap, Clallam, and Jefferson, with the waters thereof, including all Indian reservations within said counties,

which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Pierce, Mason, Thurston, Chehalis, Pacific, Lewis, Wahkiakum, Cowlitz, Clarke, and Skamania, with the waters thereof, including all Indian reservations within said counties, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Bellingham on the first Tuesdays in April and October; at Seattle on the first Tuesdays in May and November; and for the southern division, at Tacoma on the first Tuesdays in February and July. The clerks of the courts for the eastern and western districts shall maintain an office in charge of himself or a deputy at each place in their respective districts where terms of court are now required to be held.

Annotated, our § 145 note p.

§ 113. The state of West Virginia is divided into two districts, to be known as the northern and southern districts of West Virginia. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Hancock, Brooke, Ohio, Marshall, Tyler, Pleasants, Wood, Wirt, Ritchie, Doddridge, Wetzel, Monongalia, Marion, Harrison, Lewis, Gilmer, Calhoun, Upshur, Barbour, Taylor, Preston, Tucker, Randolph, Pendleton, Hardy, Grant, Mineral, Hampshire, Morgan, Berkeley, and Jefferson, with the waters thereof. Terms of the district court for the northern district shall be held at Martinsburg, the first Tuesday of April and the third Tuesday of September; at Clarksburg, the second Tuesday of April and the first Tuesday of October; at Wheeling the first Tuesday of May and the third Tuesday of October; at Philippi, the fourth Tuesday of May and the first Tuesday of November; at Parkersburg, the second Tuesday of January and the second Tuesday of June: *Provided*, That a place for holding court at Philippi shall be furnished the government free of cost by Barbour county until other provision is made therefor by law. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Jackson, Roane, Clay, Braxton, Webster, Nicholas, Pocahontas, Greenbrier, Fayette, Boone, Kanawha, Putnam, Mason, Cabell, Wayne, Lincoln, Logan, Mingo, Raleigh, Wyoming, McDowell, Mercer, Summers, and Monroe, with the waters thereof. Terms of the district court for the southern district shall be held at Charleston on the first Tuesday in June and the third Tuesday in November; at Huntington, on the first Tuesday in April and the first Tuesday after the third Monday in September; at Bluefield on the first Tuesday in May and the third Tuesday in October; at Addison on the first Monday in September; and at Lewisburg on the second Tuesday in February: *Provided*, That accommodations for holding court at Addison shall be furnished without cost to the United States.

Annotated, our § 146 note q, as amended Mch. 23, 1912, ch. 63.

See our § 146.

§ 114. The state of Wisconsin is divided into two districts, to be known as the eastern and western districts of Wisconsin. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kenosha, Kewaunee, Langlade,

Manitowoc, Marinette, Marquette, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago. Terms of the district court for said district shall be held at Milwaukee on the first Mondays in January and October; at Oshkosh on the second Tuesday in June; and at Green Bay on the first Tuesday in April. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Dunn, Douglas, Eau Claire, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, Rusk, Saint Croix, Sauk, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, and Wood. Terms of the district court for said district shall be held at Madison on the first Tuesday in December; at Eau Claire on the first Tuesday in June; at La Crosse on the third Tuesday in September; and at Superior on the fourth Tuesday in January and the second Tuesday in July. The district court for each of said districts shall be open at all times for the purpose of hearing and deciding causes of admiralty and maritime jurisdiction, so far as the same can be done without a jury. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Madison, at La Crosse, and at Superior, which shall be kept open at all times for the transaction of the business of the court. The marshal for the western district shall appoint a deputy marshal who shall reside and keep his office at Superior. All writs and other process, except criminal warrants, issued at Superior, may be made returnable at Superior; and the clerk at that place shall keep in his office the original records of all actions, prosecutions, and special proceedings so commenced and pending therein. Criminal warrants may be returned at any place within the district where court is held. Whenever warrants issued at Superior shall be returned at any other place, the clerk of the court wherein the warrant is returned, shall certify the same, under the seal of the court, together with the plea and other proceedings had thereon, and the determination of the court upon such plea or proceedings, with all papers or orders filed in reference thereto, to the clerk of the court at Superior; and the clerk at Superior shall enter upon his records a minute of the proceedings had upon the return of said warrant, certified as aforesaid. All causes and proceedings instituted in the court at Superior, shall be tried therein, unless by consent of the parties, or upon the order of the court, they are transferred to another place for trial.

Annotated, our § 147 note r.

§ 115. The state of Wyoming and the Yellowstone National Park shall constitute one judicial district, to be known as the district of Wyoming. Terms of the district court for said district shall be held at Cheyenne on the Second Mondays in May and November; at Evanston on the second Tuesday in July; and at Lander on the first Monday in October; and the said court shall hold one session annually at Sheridan, and in said national park, on such dates as the court may order. The marshal and clerk of the said court shall each, respectively, appoint at least one deputy to reside at Evanston, and one to reside at Lander, unless he himself shall reside

there, and shall also maintain an office at each of those places: *Provided*, That until a public building is provided at Lander, suitable accommodations for holding court in said town shall be furnished the government at an expense not to exceed three hundred dollars annually. The marshal of the United States for the said district may appoint one or more deputy marshals for the Yellowstone National Park, who shall reside in said park.

Annotated, our § 148 notes.

CHAPTER SIX.

CIRCUIT COURTS OF APPEALS.

Sec.
116. Circuits.
117. Circuit courts of appeals.
118. Circuit judges.
119. Allotment of justices to the circuits.
120. Chief Justice and associate justices of Supreme Court, and district judges, may sit in circuit court of appeals.
121. Justices, alloted to circuits, how designated.
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128. Jurisdiction; when judgment final.
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131. Appeals from the United States court for China.
132. Allowance of appeals, etc.
133. Writs of error and appeals from the supreme courts of Arizona and New Mexico.
134. Writs of error and appeals from district court for Alaska to circuit court of appeals for ninth circuit; court may certify question to the Supreme Court.
135. Appeals and writs of error from Alaska; where heard.

§ 116. There shall be nine judicial circuits of the United States, constituted as follows:

First. The first circuit shall include the districts of Rhode Island, Massachusetts, New Hampshire, and Maine.

Second. The second circuit shall include the districts of Vermont, Connecticut, and New York.

Third. The third circuit shall include the districts of Pennsylvania, New Jersey, and Delaware.

Fourth. The fourth circuit shall include the districts of Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

Fifth. The fifth circuit shall include the districts of Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

Sixth. The sixth circuit shall include the districts of Ohio, Michigan, Kentucky, and Tennessee.

Seventh. The seventh circuit shall include the districts of Indiana, Illinois, and Wisconsin.

Eighth. The eighth circuit shall include the districts of Nebraska, Min-

nesota, Iowa, Missouri, Kansas, Arkansas, Colorado, Wyoming, North Dakota, South Dakota, Utah and Oklahoma.

Ninth. The ninth circuit shall include the districts of California, Oregon, Nevada, Washington, Idaho, Montana, and Hawaii.

Annotated, our § 2400 note a.

§ 117. There shall be in each circuit a circuit court of appeals, which shall consist of three judges, of whom two shall constitute a quorum, and which shall be a court of record, with appellate jurisdiction as hereinafter limited and established.

Annotated, our § 2401 note b.

§ 118. There shall be in the second, seventh, and eighth circuits, respectively, four circuit judges, in the fourth circuit, two circuit judges, and in each of the other circuits, three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate. They shall be entitled to receive a salary at the rate of seven thousand dollars a year, each, payable monthly. Each circuit judge shall reside within his circuit.

Annotated, our § 2401 note c, as amended January 13, 1912, ch. 9. See our § 2401.

§ 119. The Chief Justice and associate justices of the Supreme Court shall be allotted among the circuits by an order of the court, and a new allotment shall be made whenever it becomes necessary or convenient by reason of the alteration of any circuit, or of the new appointment of a Chief Justice or associate justice, or otherwise. If a new allotment becomes necessary at any other time than during a term, it shall be made by the Chief Justice, and shall be binding until the next term and until a new allotment by the court. Whenever, by reason of death or resignation, no justice is allotted to a circuit, the Chief Justice may, until a justice is regularly allotted thereto, temporarily assign a justice of another circuit to such circuit.

Annotated, our 2402 note e.

§ 120. The Chief Justice and the associate justices of the Supreme Court assigned to each circuit, and the several district judges within each circuit, shall be competent to sit as judges of the circuit court of appeals within their respective circuits. In case the Chief Justice or an associate justice of the Supreme Court shall attend at any session of the circuit court of appeals, he shall preside. In the absence of such Chief Justice, or associate justice, the circuit judges in attendance upon the court shall preside in the order of the seniority of their respective commissions. In case the full court at any time shall not be made up by the attendance of the Chief Justice or the associate justice, and the circuit judges, one or more district judges within the circuit shall sit in the court according to such order or provision among the district judges as either by general or particular assignment shall be designated by the court: *Provided*, That no judge before whom a cause or question may have been tried or heard in a district court, or existing circuit court, shall sit on the trial or hearing of such cause or question in the circuit court of appeals.

Annotated, our § 2403 note f.

§ 121. The words "circuit justice" and "justice of a circuit," when used in this title, shall be understood to designate the justice of the Supreme Court who is allotted to any circuit; but the word "judge," when applied generally to any circuit, shall be understood to include such justice.

Annotated, our § 2401 note d.

§ 122. Each of said circuit courts of appeals shall prescribe the form and style of its seal, and the form of writs and other process and procedure as may be conformable to the exercise of its jurisdiction; and shall have power to establish all rules and regulations for the conduct of the business of the court within its jurisdiction as conferred by law.

Annotated, our § 2407 note k.

§ 123. The United States marshals in and for the several districts of said courts shall be the marshals of said circuit courts of appeals, and shall exercise the same powers and perform the same duties, under the regulations of the court, as are exercised and performed by the marshal of the Supreme Court of the United States, so far as the same may be applicable.

Annotated, our § 2405 note i.

§ 124. Each court shall appoint a clerk, who shall exercise the same powers and perform the same duties in regard to all matters within its jurisdiction, as are exercised and performed by the clerk of the Supreme Court, so far as the same may be applicable.

Annotated, our § 2404 note g.

§ 125. The clerk of the circuit court of appeals for each circuit may, with the approval of the court, appoint such number of deputy clerks as the court may deem necessary. Such deputies may be removed at the pleasure of the clerk appointing them, with the approval of the court. In case of the death of the clerk his deputy or deputies shall, unless removed by the court, continue in office and perform the duties of the clerk in his name until a clerk is appointed and has qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk and his estate and the sureties on his official bond shall be liable, and his executor or administrator shall have such remedy for such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime.

Annotated, our § 2404 note h.

§ 126. A term shall be held annually by the circuit courts of appeals in the several judicial circuits at the following places, and at such times as may be fixed by said courts, respectively: In the first circuit, in Boston; in the second circuit, in New York; in the third circuit, in Philadelphia; in the fourth circuit, in Richmond; in the fifth circuit, in New Orleans, Atlanta, Fort Worth, and Montgomery; in the sixth circuit, in Cincinnati; in the seventh circuit, in Chicago; in the eighth circuit, in Saint Louis, Denver, or Cheyenne, and Saint Paul; in the ninth circuit, in San Francisco, and each year in two other places in said circuit to be designated by the judges of said court; and in each of the above circuits, terms may be held at such other times and in such other places as said courts, respectively, may from time to time designate: *Provided*, That

terms shall be held in Atlanta on the first Monday in October, in Fort Worth on the first Monday in November, in Montgomery on the third Monday in October, in Denver or in Cheyenne on the first Monday in September, and in Saint Paul on the first Monday in May. All appeals, writs of error, and other appellate proceedings which may be taken or prosecuted from the district courts of the United States in the state of Georgia, in the state of Texas, and in the state of Alabama, to the circuit court of appeals for the fifth judicial circuit shall be heard and disposed of, respectively, by said court at the terms held in Atlanta, in Fort Worth, and in Montgomery, except that appeals or writs of error in cases of injunctions and in all other cases which, under the statutes and rules, or in the opinion of the court, are entitled to be brought to a speedy hearing may be heard and disposed of wherever said court may be sitting. All appeals, writs of errors, and other appellate proceedings which may hereafter be taken or prosecuted from the district court of the United States at Beaumont, Texas, to the circuit court of appeals for the fifth circuit, shall be heard and disposed of by the said circuit court of appeals at the terms of court held at New Orleans: *Provided*, That nothing herein shall prevent the court from hearing appeals or writs of error wherever the said court shall sit, in cases of injunctions and in all other cases which, under the statutes and the rules, or in the opinion of the court, are entitled to be brought to a speedy hearing. All appeals, writs of error, and other appellate proceedings which may be taken or prosecuted from the district courts of the United States in the states of Colorado, Utah, and Wyoming, and the supreme court of the Territory of New Mexico to the circuit court of appeals for the eighth judicial circuit, shall be heard and disposed of by said court at the terms held either in Denver or in Cheyenne, except that any case arising in any of said states or territory may, by consent of all the parties, be heard and disposed of at a term of said court other than the one held in Denver or Cheyenne.

Annotated, our § 2406 note j.

§ 127. The marshals for the several districts in which said circuit courts of appeals may be held shall, under the direction of the Attorney General, and with his approval, provide such rooms in the public buildings of the United States as may be necessary for the business of said courts, and pay all incidental expenses of said court, including criers, bailiffs, and messengers: *Provided*, That in case proper rooms can not be provided in such buildings, then the marshals, with the approval of the Attorney General, may, from time to time, lease such rooms as may be necessary for such courts.

36 Stat. at L. 1133, Comp. St. 1911, p. 193, 1912 Supp. F. S. A. v. 1, p. 194. Re-enacting part of 26 Stat. at L. 829, Foster's Fed. Prac. pp. 79, 1156, 1451, 1661, 1667, 1955, 2017, 2063, 2132, 2133, Comp. St. 1901, p. 552, 4 F. S. A. 427. In general, In re Lyman, 55 Fed. 29.

§ 128. The circuit courts of appeals shall exercise appellate jurisdiction to review by appeal or writ of error final decisions in the district courts, including the United States district court for Hawaii, in all cases other than those in which appeals and writs of error may be taken direct

to the Supreme Court, as provided in section two hundred and thirty-eight, unless otherwise provided by law; and, except as provided in sections two hundred and thirty-nine and two hundred and forty, the judgments and decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States, or citizens of different states; also in all cases arising under the patent laws, under the copyright laws, under the revenue laws, and under the criminal laws, and in admiralty cases.

Annotated, our § 2031 note a.

§ 129. Where upon a hearing in equity in a district court, or by a judge thereof in vacation, an injunction shall be granted, continued, refused, or dissolved by an interlocutory order or decree, or an application to dissolve an injunction shall be refused, or an interlocutory order or decree shall be made appointing a receiver, an appeal may be taken from such interlocutory order or decree granting, continuing, refusing, dissolving, or refusing to dissolve, an injunction, or appointing a receiver, to the circuit court of appeals, notwithstanding an appeal in such case might, upon final decree under the statutes regulating the same, be taken directly to the Supreme Court: *Provided*, That the appeal must be taken within thirty days from the entry of such order or decree, and it shall take precedence in the appellate court; and the proceedings in other respects in the court below shall not be stayed unless otherwise ordered by that court, or the appellate court, or a judge thereof, during the pendency of such appeal: *Provided, however*, That the court below may, in its discretion, require as a condition of the appeal an additional bond.

Annotated, our § 2032 note b. Referred to in our § 2054.

§ 130. The circuit courts of appeals shall have the appellate and supervisory jurisdiction conferred upon them by the act entitled "An Act to Establish a Uniform System of Bankruptcy throughout the United States," approved July first, eighteen hundred and ninety-eight, and all laws amendatory thereof, and shall exercise the same in the manner therein prescribed.

Annotated, our § 2033 note c.

§ 131. The circuit court of appeals for the ninth circuit is empowered to hear and determine writs of error and appeals from the United States court for China, as provided in the act entitled "An Act Creating a United States Court for China and Prescribing the Jurisdiction thereof," approved June thirtieth, nineteen hundred and six.

Annotated, our § 2034 note d.

§ 132. Any judge of a circuit court of appeals, in respect of cases brought or to be brought before that court, shall have the same powers and duties as to allowances of appeals and writs of error, and the conditions of such allowances, as by law belong to the justices or judges in respect of other courts of the United States, respectively.

Annotated, our § 2037 note g.

§ 133. The circuit courts of appeals, in cases in which their judgments and decrees are made final by this title, shall have appellate jurisdiction, by writ of error or appeal, to review the judgments, orders, and decrees of the supreme courts of Arizona and New Mexico, as by this title they

may have to review the judgments, orders, and decrees of the district courts; and for that purpose said territories shall, by orders of the Supreme Court of the United States, to be made from time to time, be assigned to particular circuits.

36 Stat. at L. 1134, Comp. St. 1911, p. 195, 1912 Supp. F. S. A. v. 1, p. 196. Re-enacting § 15, C. C. A. act of 1891, Comp. St. 1901, p. 554, 4 F. S. A. 431. In general, Int. Com. Com. v. Humboldt Steamship Co. 224 U. S. 474, 56 L. ed. 849, 32 Sup. Ct. Rep. 556.

§ 134. In all cases other than those in which a writ of error or appeal will lie direct to the Supreme Court of the United States as provided in section two hundred and forty-seven, in which the amount involved or the value of the subject-matter in controversy shall exceed five hundred dollars, and in all criminal cases, writs of error and appeals shall lie from the district court for Alaska or from any division thereof, to the circuit court of appeals for the ninth circuit, and the judgments, orders, and decres of said court shall be final in all such cases. But whenever such circuit court of appeals may desire the instruction of the Supreme Court of the United States upon any question or proposition of law which shall have arisen in any such case, the court may certify such question or proposition to the Supreme Court, and thereupon the Supreme Court shall give its instruction upon the question or proposition certified to it, and its instructions shall be binding upon the circuit court of appeals.

Annotated, our § 842 note b. Referred to in our §§ 2035, 2082.

§ 135. All appeals, and writs of error, and other cases, coming from the district court for the district of Alaska to the circuit court of appeals for the ninth circuit, shall be entered upon the docket and heard at San Francisco, California, or at Portland, Oregon, or at Seattle, Washington, as the trial court before whom the case was tried below shall fix and determine: *Provided*, That at any time before the hearing of any appeal, writ of error, or other case, the parties thereto, through their respective attorneys, may stipulate at which of the above-named places the same shall be heard, in which case the case shall be remitted to and entered upon the docket at the place so stipulated and shall be heard there.

Annotated, our § 2036 note b.

CHAPTER SEVEN.

THE COURT OF CLAIMS.

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152. Costs may be allowed prevailing party.
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154. Claims pending in other courts.
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156. All claims to be filed within six years; exceptions.
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158. Oaths and acknowledgments.
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173. Claims under act of June 16, 1874.
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185. Attorney General to appear for the defense.
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187. Reports of court to Congress.

§ 136. The court of claims, established by the act of February twenty-fourth, eighteen hundred and fifty-five, shall be continued. It shall consist of a chief justice and four judges, who shall be appointed by the President, by and with the advice and consent of the Senate, and hold

their offices during good behavior. Each of them shall take an oath to support the Constitution of the United States, and to discharge faithfully the duties of his office. The chief justice shall be entitled to receive an annual salary of six thousand five hundred dollars, and each of the other judges an annual salary of six thousand dollars, payable monthly, from the Treasury.

Annotated, our § 2300 note a.

§ 137. The court of claims shall have a seal, with such device as it may order.

Annotated, our § 2300 note b.

§ 138. The court of claims shall hold one annual session at the city of Washington, beginning on the first Monday in December and continuing as long as may be necessary for the prompt disposition of the business of the court. Any three of the judges of said court shall constitute a quorum, and may hold a court for the transaction of business: *Provided*, That the concurrence of three judges shall be necessary to the decision of any case.

Annotated, our § 2304 note f.

§ 139. The said court shall appoint a chief clerk, an assistant clerk, if deemed necessary, a bailiff, and a chief messenger. The clerks shall take an oath for the faithful discharge of their duties, and shall be under the direction of the court in the performance thereof; and for misconduct or incapacity they may be removed by it from office; but the court shall report such removals, with the cause thereof, to Congress, if in session, or if not, at the next session. The bailiff shall hold his office for a term of four years, unless sooner removed by the court for cause.

Annotated, our § 2301 note c.

§ 140. The salary of the chief clerk shall be three thousand five hundred dollars a year; of the assistant clerk two thousand five hundred dollars a year; of the bailiff one thousand five hundred dollars a year, and of the chief messenger one thousand dollars a year, payable monthly from the Treasury.

36 Stat. at L. 1136, Comp. St. 1911, p. 197, 1912 Supp. F. S. A. v. 1, p. 199. Re-enacting § 1054, R. S. U. S., Rose's Code, §§ 578, 685, Foster's Fed. Prac. p. 1683, Comp. St. 1901, p. 730, 2 F. S. A. 54, and appropriation acts under it, which section is repealed by § 297, Judicial Code.

§ 141. The chief clerk shall give bond to the United States in such amount, in such form, and with such security as shall be approved by the Secretary of the Treasury.

36 Stat. at L. 1136, Comp. St. 1911, p. 197, 1912 Supp. F. S. A. v. 1, p. 199. Re-enacting § 1055 R. S. U. S., Rose's Code, § 594 (see Ref. § 140, supra), Comp. St. 1901, p. 731, 2 F. S. A. 54, which is repealed by § 297, Judicial Code.

§ 142. The said clerk shall have authority when he has given bond as provided in the preceding section, to disburse, under the direction of the court, the contingent fund which may from time to time be appropriated

for its use; and his accounts shall be settled by the proper accounting officers of the Treasury in the same way as the accounts of other disbursing agents of the government are settled.

Annotated, our § 2303 note e.

§ 143. On the first day of every regular session of Congress, the clerk of the court of claims shall transmit to Congress a full and complete statement of all the judgments rendered by the court during the previous year, stating the amounts thereof and the parties in whose favor they were rendered, together with a brief synopsis of the nature of the claims upon which they were rendered. At the end of every term of the court he shall transmit a copy of its decisions to the heads of departments; to the Solicitor, the Comptroller, and the Auditors of the Treasury; to the Commissioner of the General Land Office and of Indian Affairs; to the chiefs of bureaus, and to other officers charged with the adjustment of claims against the United States.

Annotated, our § 2329 note g.

§ 144. Whoever, being elected or appointed a Senator, Member of, or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment, and either before or after he has qualified, and during his continuation in office, practice in the court of claims, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and shall, moreover, thereafter be incapable of holding any office of honor, trust, or profit under the government of the United States.

Annotated, our § 2302 note d.

§ 145. The court of claims shall have jurisdiction to hear and determine the following matters:

First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with the government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however*, That nothing in this section shall be construed as giving to the said court jurisdiction to hear and determine claims growing out of the late Civil War, and commonly known as "war claims," or to hear and determine other claims which, prior to March third, eighteen hundred and eighty-seven, had been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same.

Second. All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the government of the United States against any claimant against the government in said court: *Provided*, That no suit against the government of the United States, brought by any officer of the United States to recover fees for services alleged to have been performed for the United States, shall be allowed under this chapter until an account for said fees shall have been rendered and finally acted upon as required by law, unless the

proper accounting officer of the Treasury fails to act finally thereon within six months after the account is received in said office.

Third. The claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer of the United States, or of his administrators or executors, for relief from responsibility on account of loss by capture or otherwise, while in the line of his duty, of government funds, vouchers, records, or papers in his charge, and for which such officer was and is held responsible.

Annotated, our § 2305 note g.

§ 146. Upon the trial of any cause in which any set-off, counterclaim, claim for damages, or other demand is set up on the part of the government against any person making claim against the government in said court, the court shall hear and determine such claim or demand both for and against the government and claimant; and if upon the whole case it finds that the claimant is indebted to the government it shall render judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases provided for by law. Any transcript of such judgment, filed in the clerk's office of any district court, shall be entered upon the records thereof, and shall thereby become and be a judgment of such court and be enforced as other judgments in such court are enforced.

Annotated, our § 2331 note u.

§ 147. Whenever the court of claims ascertains the facts of any loss by any paymaster, quartermaster, commissary of subsistence, or other disbursing officer, in the cases hereinbefore provided, to have been without fault or negligence on the part of such officer, it shall make a decree setting forth the amount thereof, and upon such decree the proper accounting officers of the Treasury shall allow to such officer the amount so decreed as a credit in the settlement of his accounts.

Annotated, our § 2326 note j.

§ 148. When any claim or matter is pending in any of the executive departments which involves controverted questions of fact or law, the head of such department may transmit the same, with the vouchers, papers, documents, and proofs pertaining thereto, to the court of claims and the same shall be there proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found, the court shall report its findings to the department by which it was transmitted for its guidance and action: *Provided, however*, That if it shall have been transmitted with the consent of the claimant, or if it shall appear to the satisfaction of the court upon the facts established, that under existing laws or the provisions of this chapter it has jurisdiction to render judgment or decree thereon, it shall proceed to do so, in the latter case giving to either party such further opportunity for hearing as in its judgment justice shall require, and shall report its findings therein to the department by which the same was referred to said court. The Secretary of the Treasury may, upon the certificate of any auditor, or of the Comptroller of the Treasury, direct any claim or matter, of which, by reason of the subject matter or character, the said court might under existing laws, take jurisdiction on the voluntary action of the claimant, to be transmitted,

with all the vouchers, papers, documents and proofs pertaining thereto, to the said court for trial and adjudication.

Annotated, our § 2309 note l.

§ 149. All cases transmitted by the head of any department, or upon the certificate of any auditor, or of the Comptroller of the Treasury, according to the provisions of the preceding section, shall be proceeded in as other cases pending in the court of claims, and shall, in all respects, be subject to the same rules and regulations.

Annotated, our § 2309 note m.

§ 150. The amount of any final judgment or decree rendered in favor of the claimant, in any case transmitted to the court of claims under the two preceding sections, shall be paid out of any specific appropriation applicable to the case, if any such there be; and where no such appropriation exists, the judgment or decree shall be paid in the same manner as other judgments of the said court.

Annotated, our § 2330 note s.

§ 151. Whenever any bill, except for a pension, is pending in either House of Congress providing for the payment of a claim against the United States, legal or equitable, or for a grant, gift, or bounty to any person, the House in which such bill is pending may, for the investigation and determination of facts, refer the same to the court of claims, which shall proceed with the same in accordance with such rules as it may adopt and report to such House the facts in the case and the amount, where the same can be liquidated, including any facts bearing upon the question whether there has been delay or laches in presenting such claim or applying for such grant, gift, or bounty, and any facts bearing upon the question whether the bar of any statute of limitations should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy, together with such conclusions as shall be sufficient to inform Congress of the nature and character of the demand, either as a claim, legal or equitable, or as a gratuity against the United States, and the amount, if any, legally or equitably due from the United States to the claimant: *Provided, however*, That if it shall appear to the satisfaction of the court upon the facts established, that under existing laws or the provisions of this chapter, the subject matter of the bill is such that it has jurisdiction to render judgment or decree thereon, it shall proceed to do so, giving to either party such further opportunity for hearing as in its judgment justice shall require, and it shall report its proceedings therein to the House of Congress by which the same was referred to said court.

Annotated, our § 2310 note n.

§ 152. If the government of the United States shall put in issue the right of the plaintiff to recover, the court may, in its discretion, allow costs to the prevailing party from the time of joining such issue. Such costs, however, shall include only what is actually incurred for witnesses, and for summoning the same, and fees paid to the clerk of the court.

Annotated, our § 2327 note m.

§ 153. The jurisdiction of the said court shall not extend to any claim against the government not pending therein on December first, eighteen

hundred and sixty-two, growing out of or dependent on any treaty stipulation entered into with foreign nations or with the Indian tribes.

Annotated, our § 2306 note h.

§ 154. No person shall file or prosecute in the court of claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States.

Annotated, our § 2306 note i.

§ 155. Aliens who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts, shall have the privilege of prosecuting claims against the United States in the court of claims, whereof such court, by reason of their subject matter and character, might take jurisdiction.

Annotated, our § 2307 note j.

§ 156. Every claim against the United States cognizable by the court of claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives, as provided by law, within six years after the claim first accrues: *Provided*, That the claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively.

Annotated, our § 403 note a. Referred to in our § 2314.

§ 157. The said court shall have power to establish rules for its government and for the regulation of practice therein, and it may punish for contempt in the manner prescribed by the common law, may appoint commissioners, and may exercise such powers as are necessary to carry into effect the powers granted to it by law.

Annotated, our § 2315 note q.

§ 158. The judges and clerks of said court may administer oaths and affirmations, taking acknowledgments of instruments in writing, and give certificates of the same.

Annotated, our § 2316 note s.

§ 159. The claimant shall in all cases fully set forth in his petition the claim, the action thereon in Congress or by any of the departments, if such action has been had, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of said claim or of any part thereof or interest therein has been made, except as stated in the petition,

that said claimant is justly entitled to the amount therein claimed from the United States after allowing all just credits and off-sets; that the claimant and, where the claim has been assigned, the original and every prior owner thereof, if a citizen, has at all times borne true allegiance to the government of the United States, and, whether a citizen or not, has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said government, and that he believes the facts as stated in the said petition to be true. The said petition shall be verified by the affidavit of the claimant, his agent or attorney.

Annotated, our § 2316 note r.

§ 160. The said allegations as to true allegiance and voluntary aiding, abetting, or giving encouragement to rebellion against the government may be traversed by the government, and if on the trial such issues shall be decided against the claimant, his petition shall be dismissed.

Annotated, our § 2319 note xx.

§ 161. Whenever it is material in any claim to ascertain whether any person did or did not give any aid or comfort to forces or government of the late Confederate States during the Civil War, the claimant asserting the loyalty of any such person to the United States during such Civil War shall be required to prove affirmatively that such person did, during said Civil War, consistently adhere to the United States and did give no aid or comfort to persons engaged in said Confederate service in said Civil War.

Annotated, our § 2320 note y.

§ 162. The court of claims shall have jurisdiction to hear and determine the claims of those whose property was taken subsequent to June the first, eighteen hundred and sixty-five, under the provisions of the act of Congress approved March twelfth, eighteen hundred and sixty-three, entitled "An Act to Provide for the Collection of Abandoned Property and for the Prevention of Frauds in Insurrectionary Districts within the United States," and acts amendatory thereof, where the property so taken was sold and the net proceeds thereof was placed in the Treasury of the United States; and the Secretary of the Treasury shall return said net proceeds to the owners thereof, on the judgment of said court, and full jurisdiction is given to said court to adjudge said claims, any statutes of limitations to the contrary notwithstanding.

Annotated, our § 2308 note k.

§ 163. The court of claims shall have power to appoint commissioners to take testimony to be used in the investigation of claims which come before it, to prescribe the fees which they shall receive for their services, and to issue commissions for the taking of such testimony, whether taken at the instance of the claimant or of the United States.

Annotated, our § 2321 note z.

§ 164. The said court shall have power to call upon any of the departments for any information or papers it may deem necessary, and shall have the use of all recorded and printed records made by the committees of each House of Congress, when deemed necessary in the prosecution of its business. But the head of any department may refuse and omit to comply

with any call for information or papers when, in his opinion, such compliance would be injurious to the public interest.

Annotated, our § 2323 note e.

§ 165. When it appears to the court in any case that the facts set forth in the petition of the claimant do not furnish any ground for relief, it shall not authorize the taking of any testimony therein.

Annotated, our § 2318 note x.

§ 166. The court may, at the instance of the attorney or solicitor appearing in behalf of the United States, make an order in any case pending therein, directing any claimant in such case to appear, upon reasonable notice, before any commissioner of the court and be examined on oath touching any or all matters pertaining to said claim. Such examination shall be reduced to writing by the said commissioner, and be returned to and filed in the court, and may, at the discretion of the attorney or solicitor of the United States appearing in the case, be read and used as evidence on the trial thereof. And if any claimant, after such order is made and due and reasonable notice thereof is given to him, fails to appear, or refuses to testify or answer fully as to all matters within his knowledge material to the issue, the court may, in its discretion, order that the said cause shall not be brought forward for trial until he shall have fully complied with the order of the court in the premises.

Annotated, our § 2322 note d.

§ 167. The testimony in cases pending before the court of claims shall be taken in the county where the witness resides, when the same can be conveniently done.

Annotated, our § 2321 note a.

§ 168. The court of claims may issue subpœnas to require the attendance of witnesses in order to be examined before any person commissioned to take testimony therein. Such subpœnas shall have the same force as if issued from a district court, and compliance therewith shall be compelled under such rules and orders as the court shall establish.

Annotated, our § 2321 note b.

§ 169. In taking testimony to be used in support of any claim, opportunity shall be given to the United States to file interrogatories, or by attorney to examine witnesses, under such regulations as said court shall prescribe; and like opportunity shall be afforded the claimant, in cases where testimony is taken on behalf of the United States, under like regulations.

Annotated, our § 2324 note g.

§ 170. The commissioner taking testimony to be used in the court of claims shall administer an oath or affirmation to the witness brought before him for examination.

Annotated, our § 2321 note c.

§ 171. When testimony is taken for the claimant, the fees of the commissioner before whom it is taken, and the cost of the commission and notice, shall be paid by such claimant; and when it is taken at the instance of the government, such fees shall be paid out of the contingent fund

provided for the court of claims, or other appropriation made by Congress for that purpose.

Annotated, our § 2327 note l.

§ 172. Any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance of any claim or of any part of any claim against the United States shall, *ipso facto*, forfeit the same to the government; and it shall be the duty of the court of claims, in such cases, to find specifically that such fraud was practiced or attempted to be practiced, and thereupon to give judgment that such claim is forfeited to the government, and that the claimant be forever barred from prosecuting the same.

Annotated, our § 2012 note f. Referred to in our § 2317.

§ 173. No claim shall be allowed by the accounting officers under the provisions of the act of Congress approved June sixteen, eighteen hundred and seventy-four, or by the court of claims, or by Congress, to any person where such claimant, or those under whom he claims, shall wilfully, knowingly, and with intent to defraud the United States, have claimed more than was justly due in respect of such claim, or presented any false evidence to Congress, or to any department or court, in support thereof.

Annotated, our § 2317 note v.

§ 174. When judgment is rendered against any claimant, the court may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

Annotated, our § 2325 note h.

§ 175. The court of claims, at any time while any claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, may, on motion, on behalf of the United States, grant a new trial and stay the payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States; but until an order is made staying the payment of a judgment, the same shall be payable and paid as now provided by law.

Annotated, our § 2325 note i.

§ 176. There shall be taxed against the losing party in each and every cause pending in the court of claims the cost of printing the record in such case, which shall be collected, except when the judgment is against the United States, by the clerk of said court and paid into the Treasury of the United States.

Annotated, our § 2327 note n.

§ 177. No interest shall be allowed on any claim up to the time of the rendition of judgment thereon by the court of claims, unless upon a contract expressly stipulating for the payment of interest.

Annotated, our § 2326 note k.

§ 178. The payment of the amount due by any judgment of the court of claims, and of any interest thereon allowed by law, as provided by law, shall be a full discharge to the United States of all claim and demand touching any of the matters involved in the controversy.

Annotated, our § 2328 note p.

§ 179. Any final judgment against the claimant on any claim prosecuted as provided in this chapter shall forever bar any further claim or demand against the United States arising out of the matters involved in the controversy.

Annotated, our § 2328 note o.

§ 180. Whenever any person shall present his petition to the court of claims alleging that he is or has been indebted to the United States as an officer or agent thereof, or by virtue of any contract therewith, or that he is the guarantor, or surety, or personal representative of any officer or agent or contractor so indebted, or that he or the person for whom he is such surety, guarantor, or personal representative has held any office or agency under the United States, or entered into any contract therewith, under which it may be or has been claimed that an indebtedness to the United States had arisen and exists, and that he or the person he represents has applied to the proper department of the government requesting that the account of such office, agency, or indebtedness may be adjusted and settled, and that three years have elapsed from the date of such application, and said account still remains unsettled and unadjusted, and that no suit upon the same has been brought by the United States, said court shall, due notice first being given to the head of said department and to the Attorney General of the United States, proceed to hear the parties and to ascertain the amount, if any, due the United States on said account. The Attorney General shall represent the United States at the hearing of said cause. The court may postpone the same from time to time whenever justice shall require. The judgment of said court or of the Supreme Court of the United States, to which an appeal shall lie, as in other cases, as to the amount due, shall be binding and conclusive upon the parties. The payment of such amount so found due by the court shall discharge such obligation. An action shall accrue to the United States against such principal, or surety, or representative to recover the amount so found due, which may be brought at any time within three years after the final judgment of said court; and unless suit shall be brought within said time, such claim and the claim on the original indebtedness shall be forever barred. The provisions of section one hundred and sixty-six shall apply to cases under this section.

Annotated, our § 2311 note o.

§ 181. The plaintiff or the United States, in any suit brought under the provision of the section last preceding, shall have the same right of appeal as is conferred under sections two hundred and forty-two and two hundred and forty-three; and such right shall be exercised only within the time and in the manner therein prescribed.

Annotated, our § 2332 note v.

§ 182. In any case brought in the court of claims under any act of Congress by which that court is authorized to render a judgment or decree against the United States, or against any Indian tribe or any Indians, or against any fund held in trust by the United States for any Indian tribe or for any Indians, the claimant, or the United States, or the tribe of Indians, or other party in interest shall have the same right of appeal as is conferred under sections two hundred and forty-two and two hundred

and forty-three; and such right shall be exercised only within the time and in the manner therein prescribed.

Annotated, our § 2332 note w.

§ 183. The Attorney General shall report to Congress, at the beginning of each regular session, the suits under section one hundred and eighty, in which a final judgment or decree has been rendered, giving the date of each and a statement of the costs taxed in each case.

Annotated, our § 2329 note r.

§ 184. In any case of a claim for supplies or stores taken by or furnished to any part of the military or naval forces of the United States for their use during the late Civil War, the petition shall aver that the person who furnished such supplies or stores, or from whom such supplies or stores were taken, did not give any aid or comfort to said rebellion, but was throughout that war loyal to the government of the United States, and the fact of such loyalty shall be a jurisdictional fact; and unless the said court shall, on a preliminary inquiry, find that the person who furnished such supplies or stores, or from whom the same were taken as aforesaid, was loyal to the government of the United States throughout said war, the court shall not have jurisdiction of such cause, and the same shall, without further proceedings, be dismissed.

Annotated, our § 2316 note t.

§ 185. The Attorney-General, or his assistants under his direction, shall appear for the defense and protection of the interests of the United States in all cases which may be transmitted to the court of claims under the provisions of this chapter, with the same power to interpose counterclaims, offsets, defenses for fraud practiced or attempted to be practiced by claimants, and other defenses, in like manner as he is required to defend the United States in said court.

Annotated, our § 2317 note u.

§ 186. No person shall be excluded as a witness in the court of claims on account of color, because he or she is a party to or interested in the cause or proceeding; and any plaintiff or party in interest may be examined as a witness on the part of the government.

Annotated, our § 2324 note f, as amended, Act February 5, 1912, ch. 28. See our § 2324.

§ 187. Reports of the court of claims to Congress, under sections one hundred and forty-eight and one hundred and fifty-one, if not finally acted upon during the session at which they are reported, shall be continued from session to session and from Congress to Congress until the same shall be finally acted upon.

Annotated, our § 2330 note t.

CHAPTER EIGHT.

THE COURT OF CUSTOMS APPEALS.

Sec.
188. Court of customs appeals; appointment and salary of judges; quorum; circuit and district judges may act in place of judge disqualified, etc.
189. Court to be always open for business; terms may be held in any circuit; when expenses of judges to be paid.
190. Marshal of the court; appointment, salary, and duties.
191. Clerk of the court; appointment, salary, and duties.
192. Assistant clerk, stenographic clerks, and reporter; appointment, salary, and duties.
193. Rooms for holding court to be provided; bailiffs and messengers.
194. To be a court of record; to prescribe form and style of seal, and establish rules and regulations; may affirm, modify, or reverse and remand case, etc.
195. Final decisions of board of general appraisers to be reviewed only by customs court.
196. Other courts deprived of jurisdiction in customs cases; pending cases excepted.
197. Transfer to customs court of pending cases; completion of testimony.
198. Appeals from board of general appraisers; time within which to be taken; record to be transmitted to customs court.
199. Records filed in customs court to be at once placed on calendar; calendar to be called every sixty days.

§ 188. There shall be a United States court of customs appeals, which shall consist of a presiding judge and four associate judges, each of whom shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive a salary of seven thousand dollars a year. The presiding judge shall be so designated in the order of appointment and in the commission issued to him by the President; and the associate judges shall have precedence according to the date of their commissions. Any three members of said court shall constitute a quorum, and the concurrence of three members shall be necessary to any decision thereof. In case of a vacancy or of the temporary inability or disqualification, for any reason, of one or two of the judges of said court, the President may, upon the request of the presiding judge of said court, designate any qualified United States circuit or district judge or judges to act in his or their place; and such circuit or district judges shall be duly qualified to so act.

Annotated, our § 2253 note b.

§ 189. The said court of customs appeals shall always be open for the transaction of business, and sessions thereof may, in the discretion of the court, be held in the several judicial circuits, and at such places as said court may from time to time designate. Any judge who, in pursuance of the provisions of this chapter, shall attend a session of said court at any place other than the city of Washington, shall be paid, upon his written and itemized certificate, by the marshal of the district in

which the court shall be held, his actual and necessary expenses incurred for travel and attendance, and the actual and necessary expenses of one stenographic clerk who may accompany him; and such payments shall be allowed the marshal in the settlement of his accounts with the United States.

Annotated, our § 2258 note g.

§ 190. Said court shall have the services of a marshal, with the same duties and powers, under the regulations of the court, as are now provided for the marshal of the Supreme Court of the United States, so far as the same may be applicable. Said services within the District of Columbia shall be performed by a marshal to be appointed by and to hold office during the pleasure of the court, who shall receive a salary of three thousand dollars per annum. Said services outside of the District of Columbia shall be performed by the United States marshals in and for the districts where sessions of said court may be held; and to this end said marshals shall be the marshals of said court. The marshal of said court for the District of Columbia, is authorized to purchase, under the direction of the presiding judge, such books, periodicals, and stationery, as may be necessary for the use of said court; and such expenditures shall be allowed and paid by the Secretary of the Treasury upon claim duly made and approved by said presiding judge.

Annotated, our § 2256 note e.

§ 191. The court shall appoint a clerk, whose office shall be in the city of Washington, District of Columbia, and who shall perform and exercise the same duties and powers in regard to all matters within the jurisdiction of said court as are now exercised and performed by the clerk of the Supreme Court of the United States, so far as the same may be applicable. The salary of the clerk shall be three thousand five hundred dollars per annum, which sum shall be in full payment for all service rendered by such clerk; and all fees of any kind whatever, and all costs, shall be by him turned into the United States Treasury. Said clerk shall not be appointed by the court or any judge thereof as a commissioner, master, receiver, or referee. The costs and fees in the said court shall be fixed and established by said court in a table of fees to be adopted and approved by the Supreme Court of the United States within four months after the organization of said court: *Provided*, That the costs and fees so fixed shall not, with respect to any item, exceed the costs and fees charged in the Supreme Court of the United States; and the same shall be expended, accounted for, and paid over to the Treasury of the United States.

Annotated, our § 2254 note c.

§ 192. In addition to the clerk, the court may appoint an assistant clerk at a salary of two thousand dollars per annum, five stenographic clerks at a salary of one thousand six hundred dollars per annum each, one stenographic reporter at a salary of two thousand five hundred dollars per annum, and a messenger at a salary of eight hundred and forty dollars per annum, all payable in equal monthly instalments, and all of whom, including the clerk, shall hold office during the pleasure of and perform such duties as are assigned them by the court. Said reporter shall pre-

pare and transmit to the Secretary of the Treasury once a week in time for publication in the Treasury Decisions copies of all decisions rendered to that date by said court, and prepare and transmit, under the direction of said court, at least once a year, reports of said decisions rendered to that date, constituting a volume, which shall be printed by the Treasury Department in such numbers and distributed or sold in such manner as the Secretary of the Treasury shall direct.

Annotated, our § 2255 note d.

§ 193. The marshal of said court for the District of Columbia and the marshals of the several districts in which said court of customs appeals may be held shall, under the direction of the Attorney General, and with his approval, provide such rooms in the public buildings of the United States as may be necessary for said court: *Provided*, That in case proper rooms cannot be provided in such buildings, then the said marshals, with the approval of the Attorney-General, may, from time to time, lease such rooms as may be necessary for said court. The bailiffs and messengers of said court shall be allowed the same compensation for their respective services as are allowed for similar services in the existing district courts. In no case shall said marshals secure other rooms than those regularly occupied by existing district courts, or other public officers, except where such cannot, by reason of actual occupancy or use, be occupied or used by said court of customs appeals.

Annotated, our § 2257 note f.

§ 194. The said court of customs appeals shall be a court of record, with jurisdiction as in this chapter established and limited. It shall prescribe the form and style of its seal, and the form of its writs and other process and procedure, and exercise such powers conferred by law as may be conformable and necessary to the exercise of its jurisdiction. It shall have power to establish all rules and regulations for the conduct of the business of the court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law. It shall have power to review any decision or matter within its jurisdiction, and may affirm, modify, or reverse the same and remand the case with such orders as may seem to it proper in the premises, which shall be executed accordingly.

Annotated, our § 2252 note a.

§ 195. The court of customs appeals established by this chapter shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided, final decisions by a board of general appraisers in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classification, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of said board, and all appealable questions as to the laws and regulations governing the collection of the customs revenues; and the judgments and decrees of said court of customs appeals shall be final in all such cases.

Annotated, our § 2259 note h.

§ 196. After the organization of said court, no appeal shall be taken or allowed from any board of United States general appraisers to any

other court, and no appellate jurisdiction shall thereafter be exercised or allowed by any other courts in cases decided by said board of United States general appraisers; but all appeals allowed by law from such board of general appraisers shall be subject to review only in the court of customs appeals hereby established, according to the provisions of this chapter: *Provided*, That nothing in this chapter shall be deemed to deprive the Supreme Court of the United States of jurisdiction to hear and determine all customs cases which have heretofore been certified to said court from the United States circuit courts of appeals on applications for writs of certiorari or otherwise, nor to review by writ of certiorari any customs case heretofore decided or now pending and hereafter decided by any circuit court of appeals, provided application for said writ be made within six months after August fifth, nineteen hundred and nine: *Provided, further*, That all customs cases decided by a circuit or district court of the United States or a court of a territory of the United States prior to said date above mentioned, and which have not been removed from said courts by appeal or writ of error, and all such cases theretofore submitted for decision in said courts and remaining undecided may be reviewed on appeal at the instance of either party by the United States court of customs appeals, provided such appeal be taken within one year from the date of the entry of the order, judgment, or decrees sought to be reviewed.

Annotated, our § 2259 note j.

§ 197. Immediately upon the organization of the court of customs appeals, all cases within the jurisdiction of that court pending and not submitted for decision in any of the United States circuit courts of appeals, United States circuit, territorial or district courts, shall, with the record and samples therein, be certified by said courts to said court of customs appeals for further proceedings in accordance herewith: *Provided*, That where orders for the taking of further testimony before a referee have been made in any of such cases, the taking of such testimony shall be completed before such certification.

Annotated, our § 2259 note i.

§ 198. If the importer, owner, consignee, or agent of any imported merchandise, or the collector or Secretary of the Treasury, shall be dissatisfied with the decision of the board of general appraisers as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, or with any other appealable decision of said board, they, or either of them, may, within sixty days next after the entry of such decree or judgment, and not afterwards, apply to the court of customs appeals for a review of the questions of law and fact involved in such decision: *Provided*, That in Alaska and in the insular and other outside possessions of the United States ninety days shall be allowed for making such application to the court of customs appeals. Such application shall be made by filing in the office of the clerk of said court a concise statement of errors of law and fact complained of; and a copy of such statement shall be served on the collector, or on the importer, owner, consignee, or agent, as the case may be. Thereupon the court shall immediately order the board of general appraisers to transmit to said court the record and evidence taken by them,

together with the certified statement of the facts involved in the case and their decision thereon; and all the evidence taken by and before said board shall be competent evidence before said court of customs appeals. The decision of said court of customs appeals shall be final, and such cause shall be remanded to said board of general appraisers for further proceedings to be taken in pursuance of such determination.

Annotated, our § 2260 note k.

§ 199. Immediately upon receipt of any record transmitted to said court for determination the clerk thereof shall place the same upon the calendar for hearing and submission; and such calendar shall be called and all cases thereupon submitted, except for good cause shown, at least once every sixty days: *Provided*, That such calendar need not be called during the months of July and August of any year.

Annotated, our § 2261 note l.

CHAPTER NINE.

THE COMMERCE COURT.

The commerce court was abolished by the deficiency appropriation act of October 22, 1913, ch. 32, 38 Stat. at L. 219, 221. The jurisdiction of this court was transferred to the various district courts. The chapter is retained in our Appendix for an understanding of the jurisdiction so transferred. The portion of the deficiency bill abolishing the commerce court is as follows:

"The commerce court, created and established by the act entitled 'An Act to Create a Commerce Court and to Amend the Act Entitled "An Act to Regulate Commerce," Approved February Fourth, Eighteen Hundred and Eighty-Seven, as Heretofore Amended, and for Other Purposes,' approved June eighteenth, nineteen hundred and ten, is abolished from and after December thirty-first, nineteen hundred and thirteen, and the jurisdiction vested in said commerce court by said act is transferred to and vested in the several district courts of the United States, and all acts or parts of acts in so far as they relate to the establishment of the commerce court are repealed. Nothing herein contained shall be deemed to affect the tenure of any of the judges now acting as circuit judges by appointment under the terms of said act, but such judges shall continue to act under assignment, as in the said act provided, as judges of the district courts and circuit courts of appeals; and in the event of and on the death, resignation, or removal from office of any of such judges, his office is hereby abolished and no successor to him shall be appointed.

"The venue of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the Commission arises, and except that

where the order does not relate either to transportation or to a matter so complained of before the Commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term "destination" shall be construed as meaning final destination of such shipment.

"The procedure in the district courts in respect to cases of which jurisdiction is conferred upon them by this act shall be the same as that heretofore prevailing in the commerce court. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States; and the right of appeal from the district courts in such cases shall be the same as the right of appeal heretofore prevailing under existing law from the commerce court. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit: *Provided*, That in cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part, of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case, if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said Commission the same re-

quirement as to judges and the same procedure as to expedition and appeal shall apply. A final judgment or decree of the district court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such case the notice required shall be served upon the defendants in the case and upon the attorney general of the state. All cases pending in the commerce court at the date of the passage of this act shall be deemed pending in and be transferred forthwith to said district courts except cases which may previously have been submitted to that court for final decree, and the latter to be transferred to the district courts if not decided by the commerce court before December first, nineteen hundred and thirteen, and all cases wherein injunctions or other orders or decrees, mandatory or otherwise, have been directed or entered prior to the abolition of the said court shall be transferred forthwith to said district courts, which shall have jurisdiction to proceed therewith and to enforce said injunctions, orders, or decrees. Each of said cases and all the records, papers, and proceedings shall be transferred to the district court wherein it might have been filed at the time it was filed in the commerce court if this act had then been in effect; and if it might have been filed in any one of two or more district courts it shall be transferred to that one of said district courts which may be designated by the petitioner or petitioners in said case, or, upon failure of said petitioners to act in the premises within thirty days after the passage of this act, to such one of said district courts as may be designated by the judges of the commerce court. The judges of the commerce court shall have authority, and are hereby directed, to make any and all orders and to take any other action necessary to transfer as aforesaid the cases and all the records, papers, and proceedings then pending in the commerce court to said district courts. All administrative books, dockets, files, and all papers of the commerce court not transferred as part of the record of any particular case shall be lodged in the Department of Justice. All furniture, carpets, and other property of the commerce court is turned over to the Department of Justice, and the Attorney General is authorized to supply such portion thereof as in his judgment may be proper and necessary to the United States board of mediation and conciliation.

"Any case hereafter remanded from the Supreme Court which, but for the passage of this act, would have been remanded to the commerce court, shall be remanded to a district court, designated by the Supreme Court, wherein it might have been instituted at the time it was instituted in the commerce court if this act had then been in effect, and thereafter such district court shall take all necessary and proper proceedings in such case in accordance with law and such mandate, order, or decree therein as may be made by said Supreme Court.

"All laws or parts of laws inconsistent with the foregoing provisions relating to the commerce court, are repealed."

Sec.
200. Commerce court created; judges of, appointment and designation; expense allowance to judges.
201. Additional circuit judges; appointment and assignment.
202. Officers of the court; clerk, marshal, etc.; salaries, etc.
203. Court to be always open for business; sessions of, to be held in Washington and elsewhere.
204. Marshals to provide rooms for holding court outside of Washington.
205. Assignment of judges to other duty; vacancies, how filled.
206. Powers of court and judges; writs, process, procedure, etc.
207. Jurisdiction of the court.
208. Suits to enjoin, etc., orders of Interstate Commerce Commissions to be against United States; restraining orders, when granted without notice.
209. Jurisdiction of the court, how invoked; practice and procedure.
210. Final judgments and decrees reviewable in Supreme Court.
211. Suits to be against United States; when United States may intervene.
212. Attorney General to control all cases; Interstate Commerce Commission may appear as of right; parties interested may intervene, etc.
213. Complainants may appear and be made parties to case.
214. Pending cases to be transferred to commerce court; exception; status of transferred cases.

§ 200. There shall be a court of the United States, to be known as the commerce court, which shall be a court of record, and shall have a seal of such form and style as the court may prescribe. The said court shall be composed of five judges, to be from time to time designated and assigned thereto by the Chief Justice of the United States, from among the circuit judges of the United States, for the period of five years, except that in the first instance the court shall be composed of the five additional circuit judges referred to in the next succeeding section, who shall be designated by the President to serve for one, two, three, four, and five years, respectively in order that the period of designation of one of the said judges shall expire in each year thereafter. In case of the death, resignation, or termination of assignment of any judge so designated, the Chief Justice shall designate a circuit judge to fill the vacancy so caused and to serve during the unexpired period for which the original designation was made. After the year nineteen hundred and fourteen no circuit judge shall be redesignated to serve in the commerce court until the expiration of at least one year after the expiration of the period of his last previous designation. The judge first designated for the five year period shall be presiding judge of said court, and thereafter the judge senior in designation shall be the presiding judge. The associate judges shall have precedence and shall succeed to the place and powers of the presiding judge whenever he may be absent or incapable of acting in the order of the date of their designations. Four of said judges shall constitute a quorum, and at least a majority of the court shall concur in all decisions. Each of the judges during the period of his service in the commerce court shall, on account of the regular sessions of the court being held in the city of Washington, receive in addition to his salary as circuit judge an expense allowance at the rate of one thousand five hundred dollars per annum.

36 Stat. at L. 1146, Comp. St. 1911, p. 214, 1912 Supp. F. S. A. v. 1, p. 215. Re-enacting part of act of June 18, 1910, ch. 309, 36 Stat. at L. 539.

§ 201. The five additional circuit judges authorized by the act to create a commerce court, and for other purposes, approved June eighteenth, nineteen hundred and ten, shall hold office during good behavior, and from time to time shall be designated and assigned by the Chief Justice of the United States for service in the district court of any district, or the circuit court of appeals for any circuit, or in the commerce court, and when so designated and assigned for service in a district court or circuit court of appeals shall have the powers and jurisdiction in this act conferred upon a circuit judge in his circuit.

36 Stat. at L. 1146, Comp. St. 1911, p. 214, 1912 Supp. F. S. A. v. 1, p. 216. Re-enacting part of Act of June 18, 1910, 36 Stat. at L. 539.

§ 202. The court shall also have a clerk and a marshal, with the same duties and powers, so far as they may be appropriate and are not altered by rule of the court, as are now possessed by the clerk and marshal, respectively, of the Supreme Court of the United States. The offices of the clerk and marshal of the court shall be in the city of Washington, in the District of Columbia. The judges of the court shall appoint the clerk and marshal, and may also appoint, if they find it necessary, a deputy clerk and deputy marshal; and such clerk, marshal, deputy clerk, and deputy marshal shall hold office during the pleasure of the court. The salary of the clerk shall be four thousand dollars per annum; the salary of the marshal three thousand dollars per annum; the salary of the deputy clerk two thousand five hundred dollars per annum; and the salary of the deputy marshal two thousand five hundred dollars per annum. The clerk and marshal may, with the approval of the court, employ all requisite assistance. The costs and fees in said court shall be established by the court in a table thereof, approved by the Supreme Court of the United States, within four months after the organization of the court; but such costs and fees shall in no case exceed those charged in the Supreme Court of the United States, and shall be accounted for and paid into the Treasury of the United States.

36 Stat. at L. 1147, Comp. St. 1911, p. 215, 1912 Supp. F. S. A. v. 1, p. 216. Re-enacting part of Act of June 18, 1910, 36 Stat. at L. 539.

§ 203. The commence court shall always be open for the transaction of business. Its regular sessions shall be held in the city of Washington, in the District of Columbia; but the powers of the court or of any judge thereof, or of the clerk, marshal, deputy clerk, or deputy marshal, may be exercised anywhere in the United States; and for expedition of the work of the court and the avoidance of undue expense or inconvenience to suitors the court shall hold sessions in different parts of the United States as may be found desirable. The actual and necessary expenses of the judges, clerk, marshal, deputy clerk, and deputy marshal of the court incurred for travel and attendance elsewhere than in the city of Washington, shall be paid upon the written and itemized certificate of such judge, clerk, marshal, deputy clerk, or deputy marshal, by the marshal of the court, and shall be allowed to him in the settlement of his accounts with the United States.

36 Stat. at L. 1148, Comp. St. 1911, p. 215, 1912 Supp. F. S. A. v. 1, p. 217. Re-enacting part of Act of June 18, 1910, 36 Stat. at L. 539.

§ 204. The United States marshals of the several districts outside of the city of Washington in which the commerce court may hold its sessions shall provide, under the direction and with the approval of the Attorney General, such rooms in the public buildings of the United States as may be necessary for the court's use; but in case proper rooms cannot be provided in such public buildings, said marshals, with the approval of the Attorney General, may then lease from time to time other necessary rooms for the court.

36 Stat. at L. 1148, Comp. St. 1911, p. 215, 1912 Supp. F. S. A. v. 1, p. 217. Re-enacting part of Act of June 18, 1910, 36 Stat. at L. 539.

§ 205. If, at any time, the business of the commerce court does not require the services of all the judges, the Chief Justice of the United States may, by writing, signed by him and filed in the Department of Justice, terminate the assignment of any of the judges, or temporarily assign him for service in any district court or circuit court of appeals. In cases of illness or other disability of any judge assigned to the commerce court the Chief Justice of the United States may assign any other circuit judge of the United States to act in his place, and may terminate such assignment when the exigency therefor shall cease; and any circuit judge so assigned to act in place of such judge shall, during his assignment, exercise all the powers and perform all the functions of such judge.

36 Stat. at L. 1148, Comp. St. 1911, p. 216, 1912 Supp. F. S. A. v. 1, p. 217. Re-enacting part of Act of June 18, 1910, 36 Stat. at L. 539.

§ 206. In all cases within its jurisdiction the commerce court, and each of the judges assigned thereto, shall, respectively, have and may exercise any and all of the powers of a district court of the United States and of the judges of said court, respectively, so far as the same may be appropriate to the effective exercise of the jurisdiction hereby conferred. The commerce court may issue all writs and process appropriate to the full exercise of its jurisdiction and powers and may prescribe the form thereof. It may also, from time to time, establish such rules and regulations concerning pleading, practice, or procedure in cases or matters within its jurisdiction as to the court shall seem wise and proper. Its orders, writs, and processes may run, be served, and be returnable anywhere in the United States; and the marshal and deputy marshal of said court and also the United States marshals and deputy marshals in the several districts of the United States shall have like powers and be under like duties to act for and in behalf of said court as pertain to United States marshals and deputy marshals generally when acting under like conditions concerning suits or matters in the district courts of the United States.

36 Stat. at L. 1148, Comp. St. 1911, p. 216, 1912 Supp. F. S. A. v. 1, p. 217. Re-enacting part of Act of June 18, 1910, 36 Stat. at L. 539. Construction. Ex parte Metropolitan Water Co. 220 U. S. 539, 55 L. ed. 575, 31 Sup. Ct. Rep. 600.

§ 207. The commerce court shall have the jurisdiction possessed by circuit courts of the United States and the judges thereof immediately prior to June eighteenth, nineteen hundred and ten, over all cases of the following kinds:

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section three of the act entitled "An Act to Further Regulate Commerce with Foreign Nations and Among the States," approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the act entitled "An Act to Regulate Commerce," approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States.

Nothing contained in this chapter shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, that is hereby transferred to and vested in the commerce court.

The jurisdiction of the commerce court over cases of the foregoing classes shall be exclusive; but this chapter shall not affect the jurisdiction possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes.

36 Stat. at L. 1148, Comp. Stat. 1911, p. 216, 1912 Supp. F. S. A. v. 1, p. 218. Re-enacting part of Act of June 18, 1910, 36 Stat. at L. 539.

Construction. Proctor & Gamble Co. v. United states, 188 Fed. 221.

Jurisdiction, Proctor & Gamble v. United States, 225 U. S. 282, 56 L. ed. 1091, 32 Sup. Ct. Rep. 761.

Misconception of extent of powers by Commission, Interstate Comm. v. Clyde Steamship Co. 181 U. S. 29, 45 L. ed. 729, 21 Sup. Ct. Rep. 512.

Directing common carriers, Southern Pac. v. Interstate Com. Com. 200 U. S. 536, 50 L. ed. 594, 26 Sup. Ct. Rep. 330.

Enforcing order of Commission, Farmer's Loan & Trust Co. v. Northern Pac. Ry. Co. 83 Fed. 249.

Power of a court of equity, Re Central Stock Yards Co. v. Louisville & N. R. Co. 112 Fed. 823.

Commerce Commission, an administrative body, Western N. Y. & P. R. Co. v. Penn. Refining Co. 137 Fed. 343, 70 C. C. A. 23.

General powers, Chicago, R. I. & P. Ry. Co. v. Interstate Com. Com. 171 Fed. 680.

§ 208. Suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the commerce court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the commerce court, in its discretion, may restrain or suspend, in whole or in part, the operation of the Commission's order pending the final hearing and determination of the suit. No order or injunction so restraining or

suspending an order of the Interstate Commerce Commission shall be made by the commerce court otherwise than upon notice and after hearing, except that in cases where irreparable damage would otherwise ensue to the petitioner, said court, or a judge thereof may, on hearing after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension in whole or in part of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of such court or judge, pending application to the court for its order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judge making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The court may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until its decision upon the application.

36 Stat. at L. 1149, Comp. St. 1911, p. 217, 1912 Supp. F. S. A. v. 1, p. 221. Re-enacting part of Act of June 18, 1910, 36 Stat. at L. 542. Injunctions United States v. Balt. & Ohio R. Co. 225 U. S. 306, 56 L. ed. 1100, 32 Sup. Ct. Rep. 817.

§ 209. The jurisdiction of the commerce court shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the commerce court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office, and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court; and may prescribe that the evidence be taken before a single judge of the court, with power to rule upon the admission of evidence. Except as may be otherwise provided in this chapter, or by rule of the court, the practice and procedure in the commerce court shall conform as nearly as may be to that in like cases in a district court of the United States.

36 Stat. at L. 1149, Comp. St. 1911, p. 217, 1912 Supp. F. S. A. v. 1, p. 221. Re-enacting part of Act of June 18, 1910, 36 Stat. at L. 539. A motion to dismiss the petition can be made under this section. Proctor &

Gamble Co. v. United States, 118 Fed. 221; Southern Pac. Co. v. Interstate Commerce Commission, 188 Fed. 241.

§ 210. A final judgment or decree of the commerce court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of said final judgment or decree. Such appeal may be taken in like manner as appeals from a district court of the United States to the Supreme Court, and the commerce court may direct the original record to be transmitted on appeal instead of a transcript thereof. The Supreme Court may affirm, reverse, or modify the final judgment or decree of the commerce court as the case may require. Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the commerce court appealed from, unless the Supreme Court or a justice thereof shall so direct; and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require. An appeal may also be taken to the Supreme Court of the United States from an interlocutory order or decree of the commerce court granting or continuing an injunction restraining the enforcement of an order of the Interstate Commerce Commission, provided such appeal be taken within thirty days from the entry of such order or decree. Appeals to the Supreme Court under this section shall have priority in hearing and determination over all other causes except criminal causes in that court.

36 Stat. at L. 1150, Comp. St. 1911, p. 218, 1912 Supp. F. S. A. v. 1, p. 222. Re-enacting part of Act of June 18, 1910, 36 Stat. at L. 539–542. In general, United States v. Balt. & Ohio R. Co. 225 U. S. 306, 56 L. ed. 1100, 32 Sup. Ct. Rep. 817.

§ 211. All cases and proceedings in the commerce court which but for this chapter would be brought by or against the Interstate Commerce Commission, shall be brought by or against the United States, and the United States may intervene in any case or proceeding in the commerce court whenever, though it has not been made a party, public interests are involved.

36 Stat. at L. 1150, Comp. St. 1911, p. 218, 1912 Supp. F. S. A. v. 1, p. 222. Re-enacting part of Act of June 18, 1910, 36 Stat. at L. 539, 542.

§ 212. The Attorney General shall have charge and control of the interests of the government in all cases and proceedings in the commerce court, and in the Supreme Court of the United States upon appeal from the commerce court. If in his opinion the public interest requires it, he may retain and employ in the name of the United States, within the appropriations from time to time made by the Congress for such purposes, such special attorneys and counselors at law as he may think necessary to assist in the discharge of any of the duties incumbent upon him and his subordinate attorneys; and the Attorney General shall stipulate with such special attorneys and counsel the amount of their compensation, which shall not be in excess of the sums appropriated therefor by Congress for such purposes, and shall have supervision of their action: *Provided*, That the Interstate Commerce Commission and any party or parties in interest to the proceeding

before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as to right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matters of procedure, and otherwise, as to subserve the ends of justice and speed the determination of such suits: *Provided, further,* That communities, associations, corporations, firms, and individuals who are interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by anyone under the provisions of this chapter, or the acts of which it is amendatory or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof; and the Attorney General shall not dispose of or discontinue said suit or proceeding over the objection of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceeding unaffected by the action or non-action of the Attorney General therein.

36 Stat. at L. 1150, Comp. St. 1911, p. 219, 1912 Supp. F. S. A. v. 1, p. 222. Re-enacting part of June 18, 1910, 36 Stat. at L. 539, 543.

§ 213. Complainants before the Interstate Commerce Commission interested in a case shall have the right to appear and be made parties to the case and be represented before the courts by counsel, under such regulations as are now permitted in similar circumstances under the rules and practice of equity courts of the United States.

36 Stat. at L. 1151, Comp. St. 1911, p. 219, 1912 Supp. F. S. A. v. 1, p. 223. Re-enacting part of Act of June 18, 1910, 36 Stat. at L. 539, 543.

§ 214. Until the opening of the commerce court, all cases and proceedings of which from that time the commerce court is hereby given exclusive jurisdiction may be brought in the same courts and conducted in like manner and with like effect as is now provided by law; and if any such case or proceeding shall have gone to final judgment or decree before the opening of the commerce court, appeal may be taken from such final judgment or decree in like manner and with like effect as is now provided by law. Any such case or proceeding within the jurisdiction of the commerce court which may have been begun in any other court as hereby allowed, before the said date, shall be forthwith transferred to the commerce court, if it has not yet proceeded to final judgment or decree in such other court unless it has been finally submitted for the decision of such court, in which case the cause shall proceed in such court to final judgment or decree and further proceeding thereafter, and appeal may be taken direct to the Supreme Court; and if remanded, such cause may be sent back to the court from which the appeal was taken or to the commerce court for further proceeding as the Supreme Court shall direct. All previous proceedings in such transferred case shall stand and operate notwithstanding the transfer, subject to the same control over them by the commerce court and to the same right of subsequent action

in the case or proceeding as if the transferred case or proceeding had been originally begun in the commerce court. The clerk of the court from which any case or proceeding is so transferred to the commere court shall transmit to and file in the commerce court the originals of all papers filed in such case or proceeding and a certified transcript of all record entries in the case or proceeding up to the time of transfer.

36 Stat. at L. 1151, Comp. St. 1911, p. 220, 1918 Supp. F. S. A. v. 1, p. 223. Re-enacting part of Act of June 18, 1910, 36 Stat. at L. 539, 544. See Hooker v. Interstate Commerce Commission, 188 Fed. 242.

CHAPTER TEN.

THE SUPREME COURT.

Sec.
215. Number of justices.
216. Precedents of the associate justices.
217. Vacancy in the office of Chief Justice.
218. Salaries of justices.
219. Clerk, marshal, and reporter.
220. The clerk to give bond.
221. Deputies of the clerk.
222. Records of the old court of appeals.
223. Tables of fees.
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252. Appellate jurisdiction under the bankruptcy act.
253. Precedence of writs of error to state courts.
254. Cost of printing records.
255. Women may be admitted to practice.

§ 215. The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum.

Annotated, our § 2450 note a.

§ 216. The associate justices shall have precedence according to the dates of their commissions, or, when the commissions of two or more of them bear the same date, according to their ages.

Annotated, our § 2450 note b.

§ 217. In case of a vacancy in the office of Chief Justice, or of his inability to perform the duties and powers of his office, they shall devolve upon the associate justice who is first in precedence, until such disability is removed, or another Chief Justice is appointed and duly qualified. This provision shall apply to every associate justice who succeeds to the office of Chief Justice.

Annotated, our § 2450 note c.

§ 218. The Chief Justice of the Supreme Court of the United States shall receive the sum of fifteen thousand dollars a year, and the justices thereof shall receive the sum of fourteen thousand five hundred dollars a year each, to be paid monthly.

Annotated, our § 2450 note d.

§ 219. The Supreme Court shall have power to appoint a clerk and a marshal for said court, and a reporter of its decisions.

Annotated, our § 2451 note e. Referred to in our § 2453.

§ 220. The clerk of the Supreme Court shall, before he enters upon the execution of his office, give bond, with sufficient sureties, to be approved by the court, to the United States, in the sum of not less than five thousand and not more than twenty thousand dollars, to be determined and regulated by the Attorney General, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court. The Supreme Court may at any time, upon the motion of the Attorney General, to be made upon thirty days' notice, require a new bond, or a bond for an increased amount within the limits above prescribed: and the failure of the clerk to execute the same shall vacate his office. All bonds given by the clerk shall, after approval, be recorded in his office, and copies thereof from the records, certified by the clerk under seal of the court, shall be competent evidence in any court. The original bonds shall be filed in the Department of Justice.

Annotated, our § 2451 note f.

§ 221. One or more deputies of the clerk of the Supreme Court may be appointed by the court on the application of the clerk, and may be removed at the pleasure of the court. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk in his name until a clerk is appointed and qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk, and his estate, and the sureties on his official bond, shall be liable: and his executor or administrator shall have such remedy for any such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime.

Annotated, our § 2452 note g.

§ 222. The records and proceedings of the court of appeals, appointed previous to the adoption of the present Constitution, shall be kept in the office of the clerk of the Supreme Court, who shall give copies thereof to any person requiring and paying for them, in the manner provided by law for giving copies of the records and proceedings of the Supreme Court; and such copies shall have like faith and credit with all other proceedings of said court.

36 Stat. at L. 1153, Comp. St. 1911, p. 222, 1912 Supp. F. S. A. v. 1, p. 266. Re-enacting § 679, R. S., Rose's Code, § 380, Comp. St. 1901, p. 559, 4 F. S. A. 435, which section is repealed by § 297, Judicial Code.

§ 223. The Supreme Court is authorized and empowered to prepare the tables of fees to be charged by the clerk thereof.

36 Stat. at L. 1153, Comp. St. 1911, p. 222, 1912 Supp. F. S. A. v. 1, p. 226. Re-enacting part of act of March 3, 1883, ch. 143, 22 Stat. at L. 631, Rose's Code, §§ 576, 707, Foster's Fed. Prac. (4th ed.) p. 1045, Comp. St. 1901, p. 650, 4 F. S. A. 139.

§ 224. The marshal is entitled to receive a salary at the rate of four thousand five hundred dollars a year. He shall attend the court at its sessions; shall serve and execute all process and orders issuing from it, or made by the Chief Justice or an associate justice in pursuance of law; and shall take charge of all property of the United States used by the court or its members. With the approval of the Chief Justice he may appoint assistants and messengers to attend the court, with the compensation allowed to officers of the House of Representatives of similar grade.

Annotated, our § 2453 note i.

§ 225. The reporter shall cause the decisions of the Supreme Court to be printed and published within eight months after they are made; and within the same time he shall deliver three hundred copies of the volumes of said reports to the Attorney General. The reporter shall, in any year when he is so directed by the court, cause to be printed and published a second volume of said decisions, of which he shall deliver a like number of copies in like manner and time.

36 Stat. at L. 1153, Comp. St. 1911, p. 223, 1912 Supp. F. S. A. v. 1, p. 226. Re-enacting § 681, R. S., Rose's Code, § 681, Comp. St. 1901, p. 560, 6 F. S. A. 767, which section is repealed by § 297, Judicial Code.

§ 226. The reporter shall be entitled to receive from the Treasury an annual salary of four thousand five hundred dollars when his report of said decisions constitutes one volume, and an additional sum of one thousand two hundred dollars when, by direction of the court, he causes to be printed and published in any year a second volume; and said reporter shall be annually entitled to clerk hire in the sum of one thousand two hundred dollars, and to office rent, stationery, and contingent expenses in the sum of six hundred dollars: *Provided*, That the volumes of the decisions of the court heretofore published shall be furnished by the reporter to the public at a sum not exceeding two dollars per volume, and those hereafter published at a sum not exceeding one dollar and seventy-five cents per volume; and the

number of volumes now required to be delivered to the Attorney General shall be furnished by the reporter without any charge therefor. Said salary and compensation, respectively, shall be paid only when he causes such decisions to be printed, published, and delivered within the time and in the manner prescribed by law, and upon the condition that the volumes of said reports shall be sold by him to the public for a price not exceeding one dollar and seventy-five cents a volume.

36 Stat. at L. 1153, Comp. St. 1911, p. 223, 1912 Supp. F. S. A. v. 1, p. 226. Drawn from § 682, R. S., Comp. St. 1901, p. 561, 6 F. S. A. 767, which section is repealed by § 297, Judicial Code.

§ 227. The Attorney General shall distribute copies of the Supreme Court reports, as follows: To the President, the justices of the Supreme Court, the judges of the commerce court, the judges of the court of customs appeals, the judges of the circuit courts of appeals, the judges of the district courts, the judges of the court of claims, the judges of the court of appeals and of the supreme court of the District of Columbia, the judges of the several territorial courts, the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Secretary of the Interior, the Postmaster General, the Attorney General, the Secretary of Agriculture, the Secretary of Commerce and Labor, the Solicitor General, the Assistant to the Attorney General, each Assistant Attorney General, each United States district attorney, each Assistant Secretary of each Executive Department, the Assistant Postmasters General, the Secretary of the Senate for the use of the Senate, the Clerk of the House of Representatives for the use of the House of Representatives, the governors of the territories, the Solicitor for the Department of State, the Treasurer of the United States, the Solicitor of the Treasury, the Register of the Treasury, the Comptroller of the Treasury, the Comptroller of the Currency, the Commissioner of Internal Revenue, the Director of the Mint, each of the six Auditors in the Treasury Department, the Judge Advocate General, War Department, the Paymaster General, War Department, the Judge Advocate General, Navy Department, the Commissioner of Indian Affairs, the Commissioner of Pensions, the Commissioner of the General Land Office, the Commissioner of Patents, the Commissioner of Education, the Commissioner of Labor, the Commissioner of Navigation, the Commissioner of Corporations, the Commissioner General of Immigration, the Chief of the Bureau of Manufactures, the Director of the Geological Survey, the Director of the Census, the Forester, Department of Agriculture, the Purchasing Agent, Postoffice Department, the Interstate Commerce Commission, the Clerk of the Supreme Court of the United States, the Marshal of the Supreme Court of the United States, the Attorney for the District of Columbia, the Naval Academy at Annapolis, the Military Academy at West Point, and the heads of such other executive offices as may be provided by law, of equal grade with any of said offices, each one copy; to the Law Library of the Supreme Court, twenty-five copies: to the Law Library of the Department of the Interior, two copies; to the Law Library of the Department of Justice, two copies: to the Secretary of the Senate for the use of the committees of the Senate, twenty-five copies; to the Clerk of the House of Representatives for the use of the committees of the House, thirty copies; to the Marshal of the Supreme Court of the

United States, as custodian of the public property used by the court, for the use of the justices thereof in the conference room, robing room, and court room, three copies; to the Secretary of War for the use of the proper courts and officers of the Philippine Islands and for the headquarters of military departments in the United States, twelve copies; and to each of the places where district courts of the United States are now holden, including Hawaii, and Porto Rico, one copy. He shall also distribute one complete set of said reports, and one set of the digests thereof, to such executive officers as are entitled to receive said reports under this section and have not already received them, to each United States judge and to each United States district attorney who has not received a set, to each of the places where district courts are now held to which said reports have not been distributed, and to each of the places at which a district court may hereafter be held, the edition of said reports and digests to be selected by the judge or officer receiving them. No distribution of reports and digests under this section shall be made to any place where the court is held in a building not owned by the United States, unless there be at such place a United States officer to whose responsible custody they can be committed. The clerks of said courts (except the Supreme Court) shall in all cases keep said reports and digest for the use of the courts and of the officers thereof. Such reports and digest shall remain the property of the United States, and shall be preserved by the officers above named, and by them turned over to their successors in office.

36 Stat. at L. 1154, Comp. St. 1911, p. 223, 1912 Supp. F. S. A. v. 1, p. 227. Drawn from § 683. R. S. Comp. St. 1901, p. 561, 6 F. S. A. 768, as amended by act of Feb. 12, 1889, ch. 135, 25 Stat. at L. 661, Comp. St. 1901, p. 562, 6 F. S. A. 769, which sections are repealed by § 297, Judicial Code.

§ 228. The publishers of the decisions of the Supreme Court shall deliver to the Attorney General, in addition to the three hundred copies delivered by the reporter, such number of copies of each report heretofore published, as the Attorney General may require, for which he shall pay not more than two dollars per volume, and such number of copies of each report hereafter published as he may require, for which he shall pay not more than one dollar and seventy-five cents per volume. The Attorney General shall include in his annual estimates submitted to Congress, an estimate for the current volumes of such reports, and also for the additional sets of reports and digests required for distribution under the section last preceding.

36 Stat. at L. 1155, Comp. St. 1911, p. 225, 1912 Supp. F. S. A. v. 1, p. 228. Drawn from act of July 1, 1902, 32 Stat. at L. 631, Comp. St. 1901, p. 562, 6 F. S. A. 771.

§ 229. The Attorney General is authorized to procure complete sets of the Federal Reporter or, in his discretion, other publication containing the decisions of the circuit courts of appeals, circuits courts, and district courts, and digests thereof, and also future volumes of the same as issued, and distribute a copy of each such reports and digests to each place where a circuit court of appeals, or a district court, is now or may hereafter regularly be held, and to the Supreme Court of the United States, the court of claims,

the court of customs appeals, the commerce court, the court of appeals and the supreme court of the District of Columbia, the Attorney General, the Solicitor General, the Solicitor of the Treasury, the Assistant Attorney General for the Department of the Interior, the Commissioner of Patents, and the Interstate Commerce Commission; and to the Secretary of the Senate, for the use of the Senate, and to the Clerk of the House of Representatives, for the use of the House of Representatives, not more than three sets each. Whenever any such court room, office, or officer shall have a partial or complete set of any such reports, or digests, already purchased or owned by the United States, the Attorney General shall distribute to such court room, office, or officer, only sufficient volumes to make a complete set thereof. No distribution of reports or digests under this section shall be made to any place where the court is held in a building not owned by the United States, unless there be at such place a United States officer to whose responsible custody they can be committed. The clerks of the courts (except the Supreme Court) to which the reports and digests are distributed under this section, shall keep such reports and digests for the use of the courts and the officers thereof. All reports and digests distributed under the provisions of this section shall be and remain the property of the United States and, before distribution, shall be plainly marked on their covers with the words "The Property of the United States," and shall be transmitted by the officers receiving them to their successors in office. Not to exceed two dollars per volume shall be paid for the back and current volumes of the Federal Reporter or other publication purchased under the provisions of this section, and not to exceed five dollars per volume for the digest, the said money to be disbursed under the direction of the Attorney General; and the Attorney General shall include in his annual estimates submitted to Congress, an estimate for the back and current volumes of such reports and digests, the distribution of which is provided for in this section.

36 Stat. at L. 1155, Comp. St. 1911, p. 225, 1912 Supp. F. S. A. v. 1, p. 228. New legislation.

§ 230. The Supreme Court shall hold at the seat of government, one term annually, commencing on the second Monday in October, and such adjourned or special term as it may find necessary for the dispatch of business.

Annotated, our § 2456 note k.

§ 231. If, at any session of the Supreme Court, a quorum does not attend on the day appointed for holding it, the justices who do attend may adjourn the court from day to day for twenty days after said appointed time, unless there be sooner a quorum. If a quorum does not attend within said twenty days the business of the court shall be continued over till the next appointed session; and if, during a term, after a quorum has assembled, less than that number attend on any day, the justices attending may adjourn the court from day to day until there is a quorum, or may adjourn without day.

Annotated, our § 2457 note l.

§ 232. The justices attending at any term, when less than a quorum is present, may, within the twenty days mentioned in the preceding section, make all necessary orders touching any suit, proceeding, or process, depending

in or returned to the court, preparatory to the hearing, trial, or decision thereof.

Annotated, our § 2457 note m.

§ 233. The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a state is a party, except between a state and its citizens, or between a state and citizens of other states, or aliens, in which latter cases it shall have original, but not exclusive, jurisdiction. And it shall have exclusively all such jurisdiction of suits or proceedings against ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have consistently with the law of nations; and original, but not exclusive, jurisdiction, of all suits brought by ambassadors, or other public ministers, or in which a consul or vice consul is a party.

Annotated, our § 2458 note n.

§ 234. The Supreme Court shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a state, or an ambassador, or other public minister, or a counsel, or vice consul is a party.

Annotated, our § 2021 note o. Referred to in our § 2459.

§ 235. The trial of issues of fact in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury.

Annotated, one § 2458 note o.

§ 236. The Supreme Court shall have appellate jurisdiction in the cases hereinafter specially provided for.

36 Stat. at L. 1156, Comp. St. 1911, p. 227, 1912 Supp. F. S. A. v. 1, p. 230. Re-enacting § 690, R. S., Rose's Code, § 37, Comp. St. 1901, p. 566, 4 F. S. A. 443, which section is repealed by § 297, Judicial Code.

§ 237. A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity; or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity, especially set up or claimed, by either party, under such Constitution, treaty, statute, commission, or authority, may be reexamined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such state court, and may, at their discretion, award execution or remand the same to the court from which it was removed by the writ.

Annotated, our § 331 note a.

§ 238. Appeals and writs of error may be taken from the district courts,

including the United States district court for Hawaii, direct to the Supreme Court in the following cases: In any case in which the jurisdiction of the court is in issue, in which case the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision; from the final sentences and decrees in prize causes; in any case that involves the construction or application of the Constitution of the United States; in any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question; and in any case in which the Constitution or law of a state is claimed to be in contravention of the Constitution of the United States.

Annotated, our § 2001 note a.

§ 239. In any case within its appellate jurisdiction, as defined in section one hundred and twenty-eight, the circuit court of appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision; and thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon the circuit court of appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal.

Annotated, our § 840 note a. Referred to in our §§ 2011, 2075.

§ 240. In any case, civil or criminal, in which the judgment or decree of the circuit court of appeals is made final by the provisions of this Title, it shall be competent for the Supreme Court to require, by certiorari or otherwise, upon the petition of any party thereto, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.

Annotated, our § 840 note a. Referred to in our §§ 2010, 2074.

§ 241. In any case in which the judgment or decree of the circuit court of appeals is not made final by the provisions of this Title, there shall be of right an appeal or writ of error to the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars, besides costs.

Annotated, our § 2009 note b.

§ 242. An appeal to the Supreme Court shall be allowed on behalf of the United States, from all judgments of the court of claims adverse to the United States, and on behalf of the plaintiff in any case where the amount in controversy exceeds three thousand dollars, or where his claim is forfeited to the United States by the judgment of said court as provided in section one hundred and seventy-two.

Annotated, our § 2012 note e.

§ 243. All appeals from the court of claims shall be taken within ninety days after the judgment is rendered, and shall be allowed under such regulations as the Supreme Court may direct.

Annotated, our § 2012 note g.

§ 244. Writs of error and appeals from the final judgments and decrees of the supreme court of, and the United States district court for, Porto Rico,

may be taken and prosecuted to the Supreme Court of the United States, in any case wherein is involved the validity of any copyright, or in which is drawn in question the validity of a treaty or statute of, or authority exercised under, the United States, or wherein the Constitution of the United States, or a treaty thereof, or an act of Congress, is brought in question and the right claimed thereunder is denied, without regard to the sum or value of the matter in dispute; and in all other cases in which the sum or value of the matter in dispute, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds the sum or value of five thousand dollars. Such writs of error and appeals shall be taken within the same time, in the same manner, and under the same regulations as writs of error and appeals are taken to the Supreme Court of the United States from the district courts.

Annotated, our § 2013 note h. Referred to in our § 2077.

§ 245. Writs of error and appeals from the final judgments and decrees of the supreme courts of the territories of Arizona and New Mexico may be taken and prosecuted to the Supreme Court of the United States in any case wherein is involved the validity of any copyright, or in which is drawn in question the validity of a treaty or statute of, or authority exercised under, the United States, without regard to the sum or value of the matter in dispute; and in all other cases in which the sum or value of the matter in dispute, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds the sum or value of five thousand dollars.

36 Stat. at L. 1158, Comp. St. 1911, p. 229, 1912 Supp. F. S. A. v. 1, p. 233. Drawn from § 702, R. S., Foster's Fed. Prac. (4th ed.) pp. 2046, 2062, Comp. St. 1901, p. 571, 4 F. S. A. 459, and §§ 1 and 2 of the act of March 3, 1885, ch. 355, 23 Stat. at L. 443, Foster's Fed. Prac. (4th ed.) pp. 1994–97, 2045–46, Comp. St. 1901, p. 571, 4 F. S. A. 463, all of which are repealed by § 297, Judicial Code.

§ 246. Writs of error and appeals from the final judgments and decrees of the supreme court of the territory of Hawaii may be taken and prosecuted to the Supreme Court of the United States, within the same time, in the same manner, under the same regulations, and in the same classes of cases, in which writs of error and appeals from the final judgments and decrees of the highest court of a state in which a decision in the suit could be had, may be taken and prosecuted to the Supreme Court of the United States under the provisions of section two hundred and thirty-seven; and also in all cases wherein the amount involved, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds the sum or value of five thousand dollars.

Annotated, our § 2014 note i. Referred to in our § 2081.

§ 247. Appeals and writs of error may be taken and prosecuted from final judgments and decrees of the district court for the district of Alaska or for any division thereof, direct to the Supreme Court of the United States, in the following cases: In prize cases; and in all cases which involve the construction or application of the Constitution of the United States, or in which the constitutionality of any law of the United States or the validity or

construction of any treaty made under its authority is drawn in question, or in which the Constitution or law of a state is claimed to be in contravention of the Constitution of the United States. Such writs of error and appeal shall be taken within the same time, in the same manner, and under the same regulations as writs of error and appeals are taken from the district courts to the Supreme Court.

Annotated, our § 2015 note j. Referred to in our § 2076.

§ 248. The Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the supreme court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby, in which the Constitution, or any statute, treaty, title, right, or privilege of the United States is involved, or in causes in which the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and such final judgments or decrees may and can be reviewed, revised, reversed, modified, or affirmed by said Supreme Court on appeal or writ of error by the party aggrieved, within the same time, in the same manner, under the same regulations, and by the same procedure, as far as applicable, as the final judgments and decrees of the district courts of the United States.

Annotated, our § 2016 note k. Referred to in our § 2078.

§ 249. In all cases where the judgment or decree of any court of a territory might be reviewed by the Supreme Court on writ of error or appeal, such writ of error or appeal may be taken, within the time and in the manner provided by law, notwithstanding such territory has, after such judgment or decree, been admitted as a state; and the Supreme Court shall direct the mandate to such court as the nature of the writ of error or appeal requires.

Annotated, our § 2017 note l.

§ 250. Any final judgment or decree of the court of appeals of the District of Columbia may be re-examined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in the following cases:

First. In cases in which the jurisdiction of the trial court is in issue; but when any such case is not otherwise reviewable in said Supreme Court, then the question of jurisdiction alone shall be certified to said Supreme Court for decision.

Second. In prize cases.

Third. In cases involving the construction or application of the Constitution of the United States, or the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority.

Fourth. In cases in which the Constitution, or any law of a state, is claimed to be in contravention of the Constitution of the United States.

Fifth. In cases in which the validity of any authority exercised under the United States, or the existence or scope of any power or duty of an officer of the United States, is drawn in question.

Sixth. In cases in which the construction of any law of the United States is drawn in question by the defendant.

Except as provided in the next succeeding section, the judgments and decrees of said court of appeals shall be final in all cases arising under the patent laws, the copyright laws, the revenue laws, the criminal laws, and in admiralty cases; and, except as provided in the next succeeding section, the judgments and decrees of said court of appeals shall be final in all cases not reviewable as hereinbefore provided.

Writs of error and appeals shall be taken within the same time, in the same manner, and under the same regulations as writs of error and appeals are taken from the circuit courts of appeals to the Supreme Court of the United States.

Annotated, our § 2018 note m. Referred to in our § 2079.

§ 251. In any case in which the judgment or decree of said court of appeals is made final by the section last preceding, it shall be competent for the Supreme Court of the United States to require, by certiorari or otherwise, any such case to be certified to it for its review and determination, with the same power and authority in the case as if it had been carried by writ of error or appeal to said Supreme Court. It shall also be competent for said court of appeals, in any case in which its judgment or decree is made final under the section last preceding, at any time to certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for their proper decision; and thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon said court of appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal.

Annotated, our § 2019 note n. Referred to in our § 2080.

§ 252. The Supreme Court of the United States is hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings, from the courts of bankruptcy, from which it has appellate jurisdiction in other cases; and shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the supreme court of the District of Columbia.

An appeal may be taken to the Supreme Court of the United States from any final decision of a court of appeals allowing or rejecting a claim under the laws relating to bankruptcy, under such rules and within such time as may be prescribed by said Supreme Court, in the following cases and no other:

First. Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of a state to the Supreme Court of the United States; or

Second. Where some justice of the Supreme Court shall certify that in his opinion the determination of the question involved in the allowance or rejection of such claim is essential to a uniform construction of the laws relating to bankruptcy throughout the United States.

Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise

jurisdiction thereof, and may issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted.

Annotated, our § 2020 note o.

§ 253. Cases on writ of error to revise the judgment of a state court in any criminal case shall have precedence on the docket of the Supreme Court, of all cases to which the government of the United States is not a party, excepting only such cases as the court, in its discretion, may decide to be of public importance.

36 Stat. at L. 1160, Comp. St. 1911, p. 233, 1912 Supp. F. S. A. v. 1, p. 238. Re-enacting § 710, R. S., Rose's Code, § 2041, Foster's Fed. Prac. (4th ed.) pp. 2004, 2121, Comp. St. 1901, p. 576, 4 F. S. A. 490.

§ 254. There shall be taxed against the losing party in each and every cause pending in the Supreme Court the cost of printing the record in such case, except when the judgment is against the United States.

36 Stat. at L. 1160, Comp. St. 1911, p. 233, 1912 Supp. F. S. A. v. 1, p. 238. Drawn from sundry civil appropriation act of March 3, 1877, ch. 105, 19 Stat. at L. 344, 2 F. S. A. 293. Cost, Railroad Co. v. Collector, 96 U. S. 594, 24 L. ed. 825.

§ 255. Any woman who shall have been a member of the bar of the highest court of any state or territory, or of the court of appeals of the District of Columbia, for the space of three years, and shall have maintained a good standing before such court, and who shall be a person of good moral character, shall, on motion, and the production of such records, be admitted to practice before the Supreme Court of the United States.

Annotated, our § 2455 note j.

CHAPTER ELEVEN.

PROVISIONS COMMON TO MORE THAN ONE COURT.

Sec.
256. Cases in which jurisdiction of United States courts shall be exclusive of state courts.
257. Oath of United States judges.
258. Judges prohibited from practicing law.
259. Traveling expenses, etc., of circuit justices and circuit and district judges.
260. Salary of judges after resignation.
261. Writs of ne exeat.
262. Power to issue writs.
263. Temporary restraining orders.
264. Injunctions; in what cases judge may grant.
265. Injunctions to stay proceedings in state courts.
Sec.
266. Injunctions based upon alleged unconstitutionality of state statutes; when and by whom may be granted.
267. When suits in equity may be maintained.
268. Power to administer oaths and punish contempts.
269. New trials.
270. Power to hold to security for the peace and good behavior.
271. Power to enforce awards of foreign consuls, etc., in certain cases.
272. Parties may manage their causes personally or by counsel.
273. Certain officers forbidden to act as attorneys.
274. Penalty for violating preceding section.

§ 256. The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several states:

First. Of all crimes and offenses cognizable under the authority of the United States.

Second. Of all suits for penalties and forfeitures incurred under the laws of the United States.

Third. Of all civil causes of admiralty and maritime jurisdiction; saving to suitors, in all cases, the right of a common-law remedy, where the common law is competent to give it.

Fourth. Of all seizures under the laws of the United States, on land or on waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize.

Fifth. Of all cases arising under the patent-right or copyright laws of the United States.

Sixth. Of all matters and proceedings in bankruptcy.

Seventh. Of all controversies of a civil nature, where a state is a party, except between a state and its citizens, or between a state and citizens of other states, or aliens.

Eighth. Of all suits and proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, or against consuls or vice consuls.

Annotated, our § 192 note a. Referred to in our §§ 359, 360, 364, 366, 367, 374, 375.

§ 257. The justices of the Supreme Court, the circuit judges, and the district judges, hereafter appointed, shall take the following oath before they proceed to perform the duties of their respective offices: "I, ————, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ———— according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States: So help me God."

36 Stat. at L. 1161, Comp. St. 1911, p. 234, 1912 Supp. F. S. A. v. 1, p. 240. Re-enacting § 712, R. S., Rose's Code, § 466, Comp. St. 1901, p. 578, 4 F. S. A. 497, which section is repealed by § 297, Judicial Code.

§ 258. It shall not be lawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law. Any person offending against the prohibition of this section shall be deemed guilty of a high misdemeanor.

36 Stat. at L. 1161, Comp. St. 1911, p. 234, 1912 Supp. F. S. A. v. 1, p. 240. Re-enacting § 713, R. S., Rose's Code, § 476, Comp. St. 1901, p. 578, 4 F. S. A. 497, which section is repealed by § 297, Judicial Code.

§ 259. The circuit justices, the circuit and district judges of the United States, and the judges of the district courts of the United States in Alaska, Hawaii, and Porto Rico, shall each be allowed and paid his necessary ex-

penses of travel, and his reasonable expenses (not to exceed ten dollars per day) actually incurred for maintenance, consequent upon his attending court or transacting other official business in pursuance of law at any place other than his official place of residence, said expenses to be paid by the marshal of the district in which such court is held or official business transacted, upon the written certificate of the justice or judge. The official place of residence of each justice and of each circuit judge while assigned to the commerce court shall be at Washington; and the official place of residence of each circuit and district judge, and of each judge of the district courts of the United States in Alaska, Hawaii, and Porto Rico, shall be at that place nearest his actual residence at which either a circuit court of appeals or a district court is regularly held. Every such judge shall, upon his appointment, and from time to time thereafter whenever he may change his official residence, in writing notify the Department of Justice of his official place of residence.

36 Stat. at L. 1161, Comp. St. 1911, p. 234, 1912 Supp. F. S. A. v. 1, p. 240. Drawn from § 554, R. S., Comp. St. 1901, p. 449, 4 F. S. A. 217, which section is repealed by § 297, Judicial Code.

§ 260. When any judge of any court of the United States appointed to hold his office during good behavior resigns his office, after having held a commission or commissions as judge of any such court or courts at least ten years continuously, and having attained the age of seventy years, he shall, during the residue of his natural life, receive the salary which is payable at the time of his retirement for the office that he held at the time of his resignation.

36 Stat. at L. 1161, Comp. St. 1911, p. 235, 1912 Supp. F. S. A. v. 1, p. 241. Re-enacting § 714, R. S., Rose's Code, § 471, Foster's Fed. Prac. (4th ed.) p. 68, Comp. St. 1901, p. 576, 4 F. S. A. 498, as amended by act of Feb. 15, 1909, ch. 127, 35 Stat. at L. 619, 1909 Supp. F. S. A. 294, which section is repealed by § 297, Judicial Code. In general, James v. United States, 202 U. S. 401, 50 L. ed. 1079, 26 Sup. Ct. Rep. 685.

§ 261. Writs of ne exeat may be granted by any justice of the Supreme Court, in cases where they might be granted by the Supreme Court; and by any district judge, in cases where they might be granted by the district court of which he is a judge. But no writ of ne exeat shall be granted unless a suit in equity is commenced, and satisfactory proof is made to the court or judge granting the same that the defendant designs quickly to depart from the United States.

Annotated, our § 1067 note n.

§ 262. The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.

Annotated, our § 1054 note d. Referred to in our §§ 1068, 2021, 2201.

§ 263. Whenever notice is given of a motion for an injunction out of a district court, the court or judge thereof may, if there appears to be danger of irreparable injury from delay, grant an order restraining the act sought

to be enjoined until the decision upon the motion; and such order may be granted with or without security, in the discretion of the court or judge.

Annotated, our § 1056 note f.

§ 264. Writs of injunction may be granted by any justice of the Supreme court. But no justice of the Supreme Court shall hear or allow any appli- any judge of a district court in cases where they might be granted by such court. But no justice of the Supreme Court shall hear or allow any application for an injunction or restraining order in any cause pending in the circuit to which he is allotted, elsewhere than within such circuit, or at such place outside of the same as the parties may stipulate in writing, except when it can not be heard by the district judge of the district. In case of the absence from the district of the district judge, or of his disability, any circuit judge of the circuit in which the district is situated may grant an injunction or restraining order in any case pending in the district court, where the same might be granted by the district judge.

Annotated, our § 1055 note e.

§ 265. The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.

Annotated, our § 1062 note l.

§ 266. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a state by restraining the action of any officer of such state in the enforcement or execution of such statute, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court, or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice to the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however,* That one of such three judges shall be a justice of the Supreme Court, or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the state, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way ex-

pedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case.

As amended, Act March 4, 1913, ch. 160. See our § 1063.

§ 267. Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate, and complete remedy may be had at law.

36 Stat. at L. 1163, Comp. St. 1911, p. 237, 1912 Supp. F. S. A. v. 1. p. 243. Re-enacting § 723, R. S. Rose's Code, § 935, Foster's Fed. Prac. (4th ed.) pp. 9, 729, Comp. St. 1901, p. 583, 4 F. S. A. 530, which section is repealed by § 297, Judicial Code. In general, Baum v. Longwell, 200 Fed. 450.

§ 268. The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts.

Annotated § 487 note a. Referred to in our § 1069.

§ 269. All of the said courts shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law.

Annotated, our § 764 note a.

§ 270. The judges of the Supreme Court and of the circuit courts of appeals and district courts, United States commissioners, and the judges and other magistrates of the several States, who are or may be authorized by law to make arrests for offenses against the United States, shall have the like authority to hold to security of the peace and for good behavior, in cases arising under the Constitution and laws of the United States, as may be lawfully exercised by any judge or justice of the peace of the respective states, in cases cognizable before them.

Annotated, our § 2128 note m.

§ 271. The district courts and the United States commissioners shall have power to carry into effect, according to the true intent and meaning thereof, the award or arbitration or decree of any consul, vice consul, or commercial agent of any foreign nation, made or rendered by virtue of authority conferred on him as such consul, vice consul, or commercial agent, to sit as judge or arbitrator in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to his charge, application for the exercise of such power being first made to such court or commissioner, by petition of such consul, vice consul, or commercial agent. And said courts and commissioners may issue all proper remedial process, mesne and final, to carry into full effect such

award, arbitration, or decree, and to enforce obedience thereto by imprisonment in the jail or other place of confinement in the district in which the United States may lawfully imprison any person arrested under the authority of the United States, until such award, arbitration, or decree is complied with, or the parties are otherwise discharged therefrom, by the consent in writing of such consul, vice consul, or commercial agent, or his successor in office, or by the authority of the foreign government appointing such consul, vice consul, or commercial agent: *Provided, however*, That the expenses of the said imprisonment and maintenance of the prisoners, and the cost of the proceedings, shall be borne by such foreign government, or by its consul, vice consul, or commercial agent requiring such imprisonment. The marshals of the United States shall serve all such process, and do all other acts necessary and proper to carry into effect the premises, under the authority of the said courts and commissioners.

Annotated, our § 205 note f.

§ 272. In all the courts of the United States the parties may plead and manage their own causes personally, or by the assistance of such counsel or attorneys at law as, by the rules of the said courts, respectively, are permitted to manage and conduct causes therein.

36 Stat. at L. 1164, Comp. St. 1911, p. 238, 1912 Supp. F. S. A. v. 1, p. 244. Re-enacting § 747, R. S. Rose's Code, § 493, Foster's Fed. Prac. (4th ed.) p. 423. 4 F. S. A. 556, Comp. St. 1901, p. 590, which section is repealed by § 297, Judicial Code. In general, United States v. Stone, 8 Fed. 232.

§ 273. No clerk, or assistant or deputy clerk, of any territorial, district, or circuit court of appeals, or of the court of claims, or of the Supreme Court of the United States, or marshal or deputy marshal of the United States within the district for which he is appointed, shall act as a solicitor, proctor, attorney, or counsel in any cause depending in any of said courts, or in any district for which he is acting as such officer.

36 Stat. at L. 1164. Comp. St. 1911, pp. 238, 458, 491, 532, 1436, 1912 Supp. F. S. A. v. 1, p. 244. Re-enacting § 748, R. S. Rose's Code, § 496, Comp. St. 1901, p. 590, 4 F. S. A. 153, which section is repealed by § 297, Judicial Code.

§ 274. Whoever shall violate the provisions of the preceding section shall be stricken from the roll of attorneys by the court upon complaint, upon which the respondent shall have due notice and be heard in his defense; and in the case of a marshal or deputy marshal so acting, he shall be recommended by the court for dismissal from office.

36 Stat. at L. 1164, Comp. St. 1911, p. 238, 1912 Supp. F. S. A. v. 1, p. 246. Re-enacting § 749, R. S. Rose's Code, § 497, Comp. St. 1901, p. 591, 4 F. S. A. 153, which section is repealed by § 297, Judicial Code.

CHAPTER TWELVE.

JURIES.

Sec.
275. Qualifications and exemptions of jurors.
276. Jurors, how drawn.
277. Jurors, how to be apportioned in the district.
278. Race or color not to exclude.
279. Venire, how issued and served.
280. Talesmen for petit juries.
281. Special juries.
282. Number of grand jurors.
283. Foreman of grand jury.
284. Grand juries, when summoned.
285. Discharge of grand juries.
286. Jurors not to serve more than once a year.
287. Challenges.
288. Persons disqualified for service on jury in prosecutions for polygamy, etc.

§ 275. Jurors to serve in the courts of the United States, in each state respectively, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such state may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned.

Annotated, our § 734 note a. Referred to in our § 1209.

§ 276. All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk may belong, the clerk and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein.

Annotated, our § 739 note e. Referred to in our § 2112.

§ 277. Jurors shall be returned from such parts of the district, from time to time, as the court shall direct, so as to be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly burden the citizens of any part of the district with such service.

Annotated, our § 738 note d. Referred to in our § 2111.

§ 278. No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States on account of race, color, or previous condition of servitude.

Annotated, our § 735 note b. Referred to in our § 2110.

§ 279. Writs of venire facias, when directed by the court, shall issue from the clerk's office, and shall be served and returned by the marshal in person, or by his deputy; or, in case the marshal or his deputy is not an indifferent

person, or is interested in the event of the cause, by such fit person as may be specially appointed for that purpose by the court, who shall administer to him an oath that he will truly and impartially serve and return the writ. Any person named in such writ who resides elsewhere than at the place at which the court is held, shall be served by the marshal mailing a copy thereof to such person commanding him to attend as a juror at a time and place designated therein, which copy shall be registered and deposited in the postoffice addressed to such person at his usual postoffice address. And the receipt of the person so addressed for such registered copy shall be regarded as personal service of such writ upon such person, and no mileage shall be allowed for the service of such person. The postage and registry fee shall be paid by the marshal and allowed him in the settlement of his accounts.

Annotated, our § 740 note f. Referred to in our § 2113.

§ 280. When, from challenges or otherwise, there is not a petit jury to determine any civil or criminal cause, the marshal or his deputy shall, by order of the court in which such defect of jurors happens, return jurymen from the bystanders sufficient to complete the panel; and when the marshal or his deputy is disqualified as aforesaid, jurors may be so returned by such disinterested person as the court may appoint, and such person shall be sworn, as provided in the preceding section.

Annotated, our § 741 note g.

§ 281. When special juries are ordered in any district court, they shall be returned by the marshal in the same manner and form as is required in such cases by the laws of the several states.

Annotated, our § 742 note h. Referred to in our § 2114.

§ 282. Every grand jury impaneled before any district court shall consist of not less than sixteen nor more than twenty-three persons. If of the persons summoned less than sixteen attend, they shall be placed on the grand jury, and the court shall order the marshal to summon, either immediately or for a day fixed, from the body of the district, and not from the bystanders, a sufficient number of persons to complete the grand jury. And whenever a challenge to a grand juror is allowed, and there are not in attendance other jurors sufficient to complete the grand jury, the court shall make a like order to the marshal to summon a sufficient number of persons for that purpose.

Annotated, our § 2116 note i.

§ 283. From the persons summoned and accepted as grand jurors, the court shall appoint the foreman, who shall have power to administer oaths and affirmations to witnesses appearing before the grand jury.

Annotated, our § 2117 note k.

§ 284. No grand jury shall be summoned to attend any district court unless the judge thereof, in his own discretion or upon a notification by the district attorney that such jury will be needed, orders a venire to issue therefor. If the United States attorney for any district which has a city or borough containing at least three hundred thousand inhabitants shall certify in writing to the district judge, or the senior district judge of the district, that the exigencies of the public service require it, the judge may, in his discretion, also order a venire to issue for a second grand jury. And said court may in term order a grand jury to be summoned at such time,

and to serve such time as it may direct, whenever, in its judgment, it may be proper to do so. But nothing herein shall operate to extend beyond the time permitted by law the imprisonment before indictment found of a person accused of a crime or offense, or the time during which a person so accused may be held under recognizance before indictment found.

Annotated, our § 2115 note i.

§ 285. The district courts, the district courts of the territories, and the supreme court of the District of Columbia may discharge their grand juries whenever they deem a continuance of the sessions of such juries unnecessary.

Annotated, our § 2118 note 1.

§ 286. No person shall serve as a petit juror in any district court more than one term in a year; and it shall be sufficient cause of challenge to any juror called to be sworn in any cause that he has been summoned and attended said court as a juror at any term of said court held within one year prior to the time of such challenge.

Annotated, our § 737 note c.

§ 287. When the offense charged is treason or a capital offense, the defendant shall be entitled to twenty and the United States to six peremptory challenges. On the trial of any other felony, the defendant shall be entitled to ten and the United States to six peremptory challenges; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges under this section. All challenges, whether to the array or panel, or to individual jurors for cause or favor, shall be tried by the court without the aid of triers.

Annotated, our § 743 note i. Referred to in our § 2144.

§ 288. In any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, it shall be sufficient cause of challenge to any person drawn or summoned as a juryman or talesman—

First, that he is or has been living in the practice of bigamy, polygamy, or unlawful cohabitation with more than one woman, or that he is or has been guilty of an offense punishable either by sections one or three of an act entitled "An Act to Amend Section Fifty-Three Hundred and Fifty-Two of the Revised Statutes of the United States, in Reference to Bigamy, and for Other Purposes," approved March twenty-second, eighteen hundred and eighty-two, or by section fifty-three hundred and fifty-two of the Revised Statutes of the United States, or the act of July first, eighteen hundred and sixty-two, entitled "An Act to Punish and Prevent the Practice of Polygamy in the Territories of the United States and Other Places, and Disapproving and Annulling Certain Acts of the Legislative Assembly of the Territory of Utah;" or

Second, that he believes it right for a man to have more than one living and undivorced wife at the same time, or to live in the practice of cohabiting with more than one woman.

Any person appearing or offered as a juror or talesman, and challenged on either of the foregoing grounds, may be questioned on his oath as to the existence of any such cause of challenge; and other evidence may be in-

troduced bearing upon the question raised by such challenge; and this question shall be tried by the court.

But as to the first ground of challenge before mentioned, the person challenged shall not be bound to answer if he shall say upon his oath that he declines on the ground that his answer may tend to criminate himself; and if he shall answer as to said first ground, his answer shall not be given in evidence in any criminal prosecution against him for any offense above named; but if he declines to answer on any ground, he shall be rejected as incompetent.

Annotated, our § 2146 note o.

CHAPTER THIRTEEN.

GENERAL PROVISIONS.

Sec.
289. Circuit courts abolished; records of to be transferred to district courts.
290. Suits pending in circuit courts to be disposed of in district courts.
291. Powers and duties of circuit courts imposed upon district courts.
292. References to laws revised in this act deemed to refer to sections of act.
293. Sections 1 to 5, Revised Statutes, to govern construction of this act.
294. Laws revised in this act to be construed as continuations of existing laws.
295. Inference of legislative construction not to be drawn by reason of arrangement of sections.
296. Act may be designated as "The Judicial Code."

§ 289. The circuit courts of the United States, upon the taking effect of this act, shall be, and hereby are, abolished; and thereupon, on said date, the clerks of said courts shall deliver to the clerks of the district courts of the United States for their respective districts all the journals, dockets, books, files, records, and other books and papers of or belonging to or in any manner connected with said circuit courts; and shall also on said date deliver to the clerks of said district courts all moneys, from whatever source received, then remaining in their hands or under their control as clerks of said circuit courts, or received by them by virtue of their said offices. The journals, dockets, books, files, records, and other books and papers so delivered to the clerks of the several district courts shall be and remain a part of the official records of said district courts, and copies thereof, when certified under the hand and seal of the clerk of the district court, shall be received as evidence equally with the originals thereof; and the clerks of the several district courts shall have the same authority to exercise all the powers and to perform all the duties with respect thereto as the clerks of the several circuit courts had prior to the taking effect of this act.

36 Stat. at L. 1167, Comp. St. 1911, p. 243, 1912 Supp. F. S. A. v. 1, p. 249. New legislation. In general, Dallyn et al. v. Brady, 197 Fed. 494.

§ 290. All suits and proceedings pending in said circuit courts on the date of the taking effect of this act, whether originally brought therein or certified thereto from the district courts, shall thereupon and thereafter be proceeded with and disposed of in the district courts in the same manner and with the same effect as if originally begun therein, the record thereof being entered in the records of the circuit courts so transferred as above provided.

36 Stat. at L. 1167, Comp. St. 1911, p. 243, 1912 Supp. F. S. A. v. 1, p. 249. New legislation. In general, Lincoln v. Robinson et al. 194 Fed. 571.

§ 291. Wherever, in any law not embraced within this act, any reference is made to, or any power or duty is conferred or imposed upon, the circuit courts, such reference shall, upon the taking effect of this act, be deemed and held to refer to, and to confer such power and impose such duty upon, the district courts.

Annotated, our § 744 note i.

§ 292. Wherever, in any law not contained within this act, a reference is made to any law revised or embraced herein, such reference, upon the taking effect hereof, shall be construed to refer to the section of this act into which has been carried or revised the provision of law to which reference is so made.

Annotated, our § 2220 note d.

§ 293. The provisions of sections one to five, both inclusive, of the Revised Statutes, shall apply to and govern the construction of the provisions of this act. The words "this title," wherever they occur herein, shall be construed to mean this act.

Annotated, our § 2220 note a.

§ 294. The provisions of this act, so far as they are substantially the same as existing statutes, shall be construed as continuations thereof, and not as new enactments, and there shall be no implication of a change of intent by reason of a change of words in such statute, unless such change of intent shall be clearly manifest.

Annotated, our § 2220 note b.

§ 295. The arrangement and classification of the several sections of this act have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the chapter under which any particular section is placed.

Annotated, our § 2220 note c.

§296. This act may be designated and cited as "The Judicial Code."

36 Stat. at L. 1168, Comp. St. 1911, p. 244, 1912 Supp. F. S. A. v. 1, p. 250. New legislation.

CHAPTER FOURTEEN.

REPEALING PROVISIONS.

Sec.
297. Sections, acts, and parts of acts repealed.
298. Repeal not to affect tenure of office, or salary, or compensation of incumbents, etc.
299. Accrued rights, etc., not affected.
300. Offenses committed, and penalties, forfeitures, and liabilities incurred, how to be prosecuted and enforced.
301. Date this act shall be effective.

§ 297. The following sections of the Revised Statutes and acts and parts of acts are hereby repealed:

Sections five hundred and thirty to five hundred and sixty, both inclusive; sections five hundred and sixty-two to five hundred and sixty-four, both inclusive; sections five hundred and sixty-seven to six hundred and twenty-seven, both inclusive; sections six hundred and twenty-nine to six hundred and forty-seven, both inclusive; sections six hundred and fifty to six hundred and ninety-seven, both inclusive; section six hundred and ninety-nine; sections seven hundred and two to seven hundred and fourteen, both inclusive; sections seven hundred and sixteen to seven hundred and twenty, both inclusive; section seven hundred and twenty-three; sections seven hundred and twenty-five to seven hundred and forty-nine, both inclusive; sections eight hundred to eight hundred and twenty-two, both inclusive; sections ten hundred and forty-nine to ten hundred and eighty-eight, both inclusive; sections ten hundred and ninety-one to ten hundred and ninety-three, both inclusive, of the Revised Statutes.

"An Act to Determine the Jurisdiction of Circuit Courts of the United States and to Regulate the Removal of Causes from State Courts, and for Other Purposes," approved March third, eighteen hundred and seventy-five.

Section five of an act entitled "An Act to Amend Section Fifty-Three Hundred and Fifty-Two of the Revised Statutes of the United States, in Reference to Bigamy, and for Other Purposes," approved March twenty-second, eighteen hundred and eighty-two; but sections six, seven, and eight of said act, and sections one, two, and twenty-six of an act entitled "An Act to Amend an Act Entitled 'An Act to Amend Section Fifty-Three Hundred and Fifty-Two of the Revised Statutes of the United States, in Reference to Bigamy, and for Other Purposes,' Approved March Twenty-second, Eighteen Hundred and Eighty-Two," approved March third, eighteen hundred and eighty-seven are hereby continued in force.

"An Act to Afford Assistance and Relief to Congress and Executive Departments in the Investigation of Claims and Demands against the Government," approved March third, eighteen hundred and eighty-three.

"An Act Regulating Appeals from the Supreme Court of the District of Columbia and the Supreme Courts of the Several Territories," approved March third, eighteen hundred and eighty-five.

"An Act To Provide for the Bringing of Suits against the Government

of the United States," approved March third, eighteen hundred and eighty-seven, except sections four, five, six, seven, and ten thereof.

Sections one, two, three, four, six, and seven of an act entitled "An Act to Correct the Enrollment of an Act Approved March Third, Eighteen Hundred and Eighty-Seven, Entitled 'An Act to Amend Sections One, Two, Three, and Ten of an Act to Determine the Jurisdiction of the Circuit Courts of the United States, and to Regulate the Removal of Causes from the State Courts, and for Other Purposes,' Approved March Third, Eighteen Hundred and Seventy-Five," approved August thirteenth, eighteen hundred and eighty-eight.

"An Act to Provide for the Bringing of Suits against the Government Cases Not Capital and Confer the Same on the Circuit Courts of Appeals," approved January twentieth, eighteen hundred and ninety-seven.

"An Act to Amend Sections One and Two of the Act of March Third, Eighteen Hundred and Eighty-Seven, Twenty-Fourth Statutes at Large, Chapter Three Hundred and Fifty-Nine," approved June twenty-seventh, eighteen hundred and ninety-eight.

"An Act to Amend the Seventh Section of the Act Entitled 'An Act to Establish Circuit Courts of Appeals and to Define and Regulate in Certain Cases the Jurisdiction of the Courts of the United States, and for Other Purposes,' Approved March Third, Eighteen Hundred and Ninety-One, and the Several Acts Amendatory Thereto," approved April fourteenth, nineteen hundred and six.

All acts and parts of acts authorizing the appointment of United States circuit or district judges, or creating or changing judicial circuits, or judicial districts or divisions thereof, or fixing or changing the times or places of holding court therein, enacted prior to February first, nineteen hundred and eleven.

Sections one, two, three, four, five, the first paragraph of section six, and section seventeen of an act entitled "An Act to Create a Commerce Court, and to Amend an Act Entitled 'An Act to Regulate Commerce,' Approved February Fourth, Eighteen Hundred and Eighty-Seven, as Heretofore Amended, and for Other Purposes," approved June eighteenth, nineteen hundred and ten.

Also other acts and parts of acts, in so far as they are embraced within and superseded by this act, are hereby repealed; the remaining portions thereof to be and remain in force with the same effect and to the same extent as if this act had not been passed.

26 Stat. at L. 1168, Comp. St. 1911, pp. 244, 245, 1912 Supp. F. S. A. v. 1, p. 250. In general, United States v. Winslow, 227 U. S. 202, 57 L. ed. 481, 33 Sup. Ct. Rep. 253.

§ 298. The repeal of existing laws providing for the appointment of judges and other officers mentioned in this act, or affecting the organization of the courts, shall not be construed to affect the tenure of office of the incumbents (except the office be abolished), but they shall continue to hold their respective offices during the terms for which appointed, unless removed

as provided by law; nor (except the office be abolished) shall such repeal affect the salary or fees or compensation of any officer or person holding office or position by virtue of any law.

36 Stat. at L. 1169, Comp. St. 1911, p. 246, 1912 Supp. F. S. A. v. 1, p. 252. In general, United States v. New Departure Mfg. Co. et al. 195 Fed. 778.

§ 299. The repeal of existing laws, or the amendments thereof, embraced in this act, shall not affect any act done, or any right accruing or accrued, or any suit or proceeding, including those pending on writ of error, appeal, certificate, or writ of certiorari, in any appellate court referred to or included within, the provisions of this act, pending at the time of the taking effect of this act, but all such suits and proceedings, and suits and proceedings for causes arising or acts done prior to such date, may be commenced and prosecuted within the same time, and with the same effect, as if said repeal or amendments had not been made.

36 Stat. at L. 1169, Comp. St. 1911, p. 246, 1912 Supp. F. S. A. v. 1, p. 252. In general, Washington Home for Incurables v. Am. Security Co. 224 U. S. 486, 56 L. ed. 854, 32 Sup. Ct. Rep. 554.

§ 300. All offenses committed, and all penalties, forfeitures, or liabilities incurred prior to the taking effect hereof, under any law embraced in, amended, or repealed by this act, may be prosecuted and punished, or sued for and recovered, in the district courts, in the same manner and with the same effect as if this act had not been passed.

36 Stat. at L. 1169, Comp. St. 1911, p. 246, 1912 Supp. F. S. A. v. 1, p. 252. In general, In re Steiner et al. 195 Fed. 299.

§ 301. This act shall take effect and be in force on and after January first, nineteen hundred and twelve.

Approved, March 3, 1911.

36 Stat. at L. 1169, Comp. St. 1911, p. 247, 1912 Supp. F. S. A. v. 1, p. 252.

RULES OF THE UNITED STATES SUPREME COURT.

PROMULGATED DECEMBER 22, 1911.

WITH AMENDMENTS OF FEBRUARY 26, APRIL 1, AND JUNE 10, 1912.

RULES OF THE UNITED STATES SUPREME COURT.

RULES OF THE SUPREME COURT OF THE UNITED STATES.

1.

CLERK.

1. The clerk of this court shall reside and keep the office at the seat of the national government, and he shall not practice, either as attorney or counselor, in this court, or in any other court, while he shall continue to be clerk of this court.

2. The clerk shall not permit any original record or paper to be taken from the court room, or from the office, without an order from the court, except as provided by rule 10.

2.

ATTORNEYS AND COUNSELORS.

1. It shall be requisite to the admission of attorneys or counselors to practice in this court, that they shall have been such for three years past in the highest courts of the states to which they respectively belong, and that their private and professional characters shall appear to be fair.

2. They shall respectively take and subscribe the following oath or affirmation, viz.:

I, ———— ————, do solemnly swear (or affirm) that I will demean myself, as an attorney and counselor of this court, uprightly, and according to law; and that I will support the Constitution of the United States.

3.

PRACTICE.

This court considers the former practice of the Courts of King's bench and of chancery, in England, as affording outlines for the practice of this court; and will, from time to time, make such alterations therein as circumstances may render necessary.

4.

BILL OF EXCEPTIONS.

The judges of the district courts in allowing bills of exception shall give effect to the following rules:

1. No bill of exceptions shall be allowed which shall contain the charge of the court at large to the jury in trials at common law, upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts; and those matters of law, and those only, shall be inserted in the bills of exceptions and allowed by the court.

2. Only so much of the evidence shall be embraced in a bill of exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and such evidence as is embraced therein shall be set forth in condensed and narrative form, save as a proper understanding of the questions presented may require that parts of it be set forth otherwise.

5.

PROCESS.

1. All process of this court shall be in the name of the President of the United States, and shall contain the Christian names, as well as the surnames, of the parties.

2. When process at common law or in equity shall issue against a state, the same shall be served on the governor, or chief executive magistrate, and attorney-general, of such state.

3. Process of subpœna, issuing out of this court, in any suit in equity, shall be served on the defendant sixty days before the return day of the said process; and if the defendant, on such service of the subpœna, shall not appear at the return day, the complainant shall be at liberty to proceed *ex parte*.

6.

MOTIONS.

1. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

2. Forty-five minutes on each side shall be allowed to the argument of a motion, and no more, without special leave of the court, granted before the argument begins.

3. No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

4. All motions to dismiss writs of error and appeals, except motions to docket and dismiss under rule 9, must be submitted in the first instance on

printed briefs or arguments. If the court desires further argument on that subject, it will be ordered in connection with the hearing on the merits. The party moving to dismiss shall serve notice of the motion, with a copy of his brief or argument, on the counsel for plaintiff in error or appellant of record in this court, at least three weeks before the time fixed for submitting the motion, in all cases except where the counsel to be notified resides west of the Rocky Mountains, in which case the notice shall be at least thirty days. Affidavits of the deposit in the mail of the notice and brief to the proper address of the counsel to be served, duly post-paid, at such time as to reach him by due course of mail, the three weeks or thirty days before the time fixed by the notice, will be regarded as prima facie evidence of service on counsel who reside without the District of Columbia. On proof of such service, the motion will be considered, unless, for satisfactory reasons, further time be given by the court to either party.

5. The court in any pending cause will receive a motion to affirm on the ground that it is manifest that the writ or appeal was taken for delay only, or that the questions on which the decision of the cause depends are so frivolous as not to need further argument. The same procedure shall apply to and control such motions as is provided for in cases of motions to dismiss under paragraph 4 of this rule.

6. Although the court upon consideration of a motion to dismiss or a motion to affirm may refuse to grant the motion, it may nevertheless, if the conclusion is arrived at that the case is of such a character as not to justify extended argument, order the cause transferred for hearing to a summary docket. The hearing of the causes on such docket will be expedited, the court providing from time to time for such speedy disposition of the docket as the regular order of business may permit, and on the hearing of such causes one half hour will be allowed each side for oral argument.

7. The court will not hear arguments on Saturday (unless for special cause it shall order to the contrary), but will devote that day to the other business of the court. The motion day shall be Monday of each week; and motions not required by the rules of the court to be put on the docket shall be entitled to preference immediately after the reading of opinions, if such motions shall be made before the court shall have entered upon the hearing of a case upon the docket.

7.

LAW LIBRARY.

1. During the session of the court, any gentleman of the bar having a case on the docket, and wishing to use any book or books in the law library, shall be at liberty, upon application to the clerk of the court, to receive an order to take the same (not exceeding at any one time three) from the library, he being thereby responsible for the due return of the same within a reasonable time, or when required by the clerk. And in case the same shall not be so returned, the party receiving the same shall be responsible for and forfeit and pay twice the value thereof, and also one dollar per day for each day's detention beyond the limited time.

2. The clerk shall deposit in the law library, to be there carefully preserved, one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions, briefs, or arguments filed therein.

3. The marshal shall take charge of the books of the court, together with such of the duplicate law books as Congress may direct to be transferred to the court, and arrange them in the conference room, which he shall have fitted up in a proper manner; and he shall not permit such books to be taken therefrom by any one except the justices of the court.

8.

WRIT OF ERROR AND APPEAL, RETURN AND RECORD.

1. The clerk of the court to which any writ of error may be directed shall make return of the same, by transmitting a true copy of the record, and of the assignment of errors, and of all proceedings in the case, under his hand and the seal of the court.

In order to enable the clerk to perform such duty and for the purpose of reducing the size of transcripts of record in cases brought to this court by appeal or writ of error, by eliminating all papers not necessay to the consideration of the questions to be reviewed, it shall be the duty of the appellant or plaintiff in error or his attorney to file with the clerk of the lower court, together with proof or acknowledgment of service of a copy on the appellee or defendant in error, or his counsel, a precipe which shall indicate the portions of the record to be incorporated into the transcript of the record on such appeal or writ of error. Should the appellee or defendant in error, or his counsel, desire additional portions of the record incorporated into the transcript of the record to be filed in this court, he shall file with the clerk of the lower court his precipe also, within ten days thereafter (unless the time shall be enlarged by a judge of the lower court or by a justice of this court), indicating such additional portions of the record desired by him.

The clerk of the lower court shall transmit to this court as the transcript of the record in the case only the portions of the record below designated by both parties as above provided.

The parties or their counsel, however, may agree by written stipulation to be filed with the clerk of the lower court the portions of the record which shall constitute the transcript of record on appeal or writ of error, and the clerk in such case shall transmit only the papers designated in such stipulation.

If this court shall find that portions of the record unnecessary to a proper presentation of the case have been incorporated into the transcript by either party, the court may order that the whole or any part of the clerk's fee for supervising the printing and of the cost of printing the record be paid by the offending party.

2. In all cases brought to this court, by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court, shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe-keeping, transporting, and return of such original papers as to him may seem proper, and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error, and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day, except in writs of error and appeals from California, Oregon, Nevada, Washington, New Mexico, Utah, Arizona, Montana, Wyoming, North Dakota, South Dakota, Alaska, Idaho, Hawaii and Porto Rico, when the time shall be extended to sixty days and from the Philippine Islands to one hundred and twenty days.

6. The record in cases of admiralty and maritime jurisdiction, when under the requirements of law the facts have been found in the court below, and the power of review is limited to the determination of questions of law arising on the record, shall be confined to the pleadings, the findings of fact, and conclusions of law thereon, the bills of exceptions, the final judgment or decree, and such interlocutory orders and decrees as may be necessary to a proper review of the case.

9.

DOCKETING CASES.

1. It shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court by or before the return day, whether in vacation or in term time. But, for good cause shown, the justice or judge who signed the citation, or any justice of this court, may enlarge the time, by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed upon producing a certificate, whether in term time or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

2. But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of time above limited

and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument.

3. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall be entered.

10.

PRINTING RECORDS.

1. In all cases the plaintiff in error or appellant, on docketing a case and filing the record, shall make such cash deposit with the clerk for the payment of his fees as he may require or otherwise satisfy him in that behalf.

2. The clerk shall cause an estimate to be made of the cost of printing the record, and of his fee for preparing it for the printer and supervising the printing, and shall notify to the party docketing the case the amount of the estimate. If he shall not pay it within a reasonable time, and for want of such payment the record shall not have been printed when a case is reached in the regular call of the docket, the case shall be dismissed.

3. Upon payment of the amount estimated by the clerk, thirty copies of the record shall be printed, under his supervision, for the use of the court and of counsel.

4. In cases of appellate jurisdiction the original transcript on file shall be taken by the clerk to the printer. But the clerk shall cause copies to be made for the printer of such original papers, sent up under rule 8, § 4, as are necessary to be printed; and of the whole record in cases of original jurisdiction.

5. The clerk shall supervise the printing, and see that the printed copy is properly indexed. He shall distribute the printed copies to the justices and the reporter, from time to time, as required, and a copy to the counsel for the respective parties.

6. If the actual cost of printing the record, together with the fee of the clerk, shall be less than the amount estimated and paid, the amount of the difference shall be refunded by the clerk to the party paying it. If the actual cost and clerk's fee shall exceed the estimate, the amount of the excess shall be paid to the clerk before the delivery of a printed copy to either party or his counsel.

7. In case of reversal, affirmance, or dismissal, with costs, the amount of the cost of printing the record and of the clerk's fee shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other proper process.

8. Upon the clerk's producing satisfactory evidence, by affidavit or the acknowledgment of the parties or their sureties, of having served a copy of the bill of fees due by them, respectively, in this court, on such parties or their sureties, an attachment shall issue against such parties or sureties, respectively, to compel payment of said fees.

9. The plaintiff in error or appellant may, within ninety days after filing the record in this court, file with the clerk a statement of the errors on which he intends to rely, and of the parts of the record which he thinks

necessary for the consideration thereof, with proof of service of the same on the adverse party. The adverse party, within ninety days thereafter, may designate in writing, filed with the clerk, additional parts of the record which he thinks material; and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the plaintiff in error or appellant. If parts of the record shall be so designated by one or both of the parties, the clerk shall print those parts only; and the court will consider nothing but those parts of the record, and the errors so stated. If at the hearing it shall appear that any material part of the record has not been printed, the writ of error or appeal may be dismissed, or such other order made as the circumstances may appear to the court to require. If the defendant in error or appellee shall have caused unnecessary parts of the record to be printed, such order as to costs may be made as the court shall think proper.

The fees of the clerk under rule 24, § 7, shall be computed, as at present, on the folios in the record as filed, and shall be in full for the performance of his duties in the execution hereof.

11.

TRANSLATIONS.

Whenever any record transmitted to this court upon a writ of error or appeal shall contain any document, paper, testimony, or other proceedings in a foreign language, and the record does not also contain a translation of such document, paper, testimony, or other proceedings, made under the authority of the inferior court, or admitted to be correct, the record shall not be printed; but the case shall be reported to this court by the clerk, and the court will order that a translation be supplied and inserted in the record.

12.

FURTHER PROOF.

1. In all cases where further proof is ordered by the court, the depositions which may be taken shall be by a commission, to be issued from this court, or from any district court of the United States.

2. In all cases of admiralty and maritime jurisdiction, where new evidence shall be admissible in this court, the evidence by testimony of witnesses shall be taken under a commission to be issued from this court, or from any district court of the United States, under the direction of any judge thereof; and no such commission shall issue but upon interrogatories, to be filed by the party applying for the commission, and notice to the opposite party or his agent or attorney, accompanied with a copy of the interrogatories so filed, to file cross-interrogatories within twenty days from the service of such notice: *Provided, however,* That nothing in this rule shall prevent any party from giving oral testimony in open court in cases where by law it is admissible.

13.

OBJECTIONS TO EVIDENCE IN THE RECORD.

In all cases of equity or admiralty jurisdiction, heard in this court, no objection shall hereafter be allowed to be taken to the admissibility of any deposition, deed, grant, or other exhibit found in the record as evidence, unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

14.

CERTIORARI.

No certiorari for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for certiorari must be made at the first term of the entry of the case; otherwise, the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

15.

DEATH OF A PARTY.

1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that unless such representatives shall become parties within the first ten days of the ensuing term, the party moving for such order, if defendant in error or appellee, shall be entitled to have the writ of error or appeal dismissed; and if the party so moving shall be plaintiff in error or appellant he shall be entitled to open the record, and on hearing have the judgment or decree reversed, if it be erroneous: *Provided, however*, that a copy of every such order shall be printed in some newspaper of general circulation within the state, territory, or district from which the case is brought, for three successive weeks, at least sixty days before the beginning of the term of the Supreme Court then next ensuing.

2. When the death of a party is suggested, and the representatives of the deceased do not appear by the tenth day of the second term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

3. When either party to a suit in a court of the United States shall de-

sire to prosecute a writ of error or appeal to the Supreme Court of the United States, from any final judgment or decree, rendered in such court, and at the time of suing out such writ of error or appeal the other party to the suit shall be dead and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit can not be revived in that court, but shall have a proper representative in some state or territory of the United States, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the commencement of the term to which such writ of error or appeal is returnable, the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered said judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some state or territory of the United States, and stating therein the name and character of such representative, and the state or territory in which such representative resides; and, upon such suggestion, he may, on motion, obtain an order that, unless such representative shall make himself a party within the first ten days of the ensuing term of the court, the plaintiff in error or appellant shall be entitled to open the record, and, on hearing, having the judgment or decree reversed, if the same be erroneous: *Provided, however,* That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least sixty days before the beginning of the term of the Supreme Court then next ensuing: *And provided, also,* That in every such case if the representative of the deceased party does not appear by the tenth day of the term next succeeding said suggestion, and the measures above provided to compel the appearance of such representative have not been taken within time as above required, by the opposite party, the case shall abate: *And provided, also,* That the said representative may at any time before or after said suggestion come in and be made a party to the suit, and thereupon the case shall proceed, and be heard and determined as in other cases.

16.

NO APPEARANCE OF PLAINTIFF IN ERROR OR APPELLANT.

Where no counsel appears and no brief has been filed for the plaintiff in error or appellant, when the case is called for trial, the defendant in error or appellee may have the plaintiff in error or appellant called and the writ of error or appeal dismissed, or may open the record and pray for an affirmance.

17.

NO APPEARANCE OF DEFENDANT IN ERROR OR APPELLEE.

Where the defendant in error or appellee fails to appear when the case

is called for trial, the court may proceed to hear an argument on the part of the plaintiff in error or appellant and to give judgment according to the right of the case.

18.

NO APPEARANCE OF EITHER PARTY.

When a case is reached in the regular call of the docket, and there is no appearance for either party, the case shall be dismissed at the cost of the plaintiff in error or appellant.

19.

NEITHER PARTY READY AT SECOND TERM.

When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to argue it, it shall be dismissed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

20.

PRINTED ARGUMENTS.

1. In all cases brought here on writ of error, appeal, or otherwise, the court will receive printed arguments without regard to the number of the case on the docket, if the counsel on both sides shall choose to submit the same within the first ninety days of the term; and, in addition, appeals from the court of claims may be submitted by both parties within thirty days after they are docketed, but not after the first day of April; but thirty copies of the arguments, signed by attorneys or counselors of this court, must be first filed.

2. When a case is reached in the regular call of the docket, and a printed argument shall be filed for one or both parties, the case shall stand on the same footing as if there were an appearance by counsel.

3. When a case is taken up for trial upon the regular call of the docket, and argued orally in behalf of only one of the parties, no printed argument for the opposite party will be received, unless it is filed before the oral argument begins, and the court will proceed to consider and decide the case upon the *ex parte* argument.

4. No brief or argument will be received, either through the clerk or otherwise, after a case has been argued or submitted, except upon leave granted in open court after notice to opposing counsel.

21.

BRIEFS.

1. The counsel for plaintiff in error or appellant shall file with the clerk of

the court, at least three weeks before the case is called for argument, thirty copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain, in the order here stated—

(1) A concise abstract, or statement of the case, presenting succinctly the questions involved and the manner in which they are raised.

(2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be instructions given or instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

(3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a state is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or an appellee shall file with the clerk thirty printed copies of his argument, at least one week before the case is called for hearing. His brief shall be of like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

4. When there is no assignment of errors, as required by § 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary, and by request of the court.

6. When no oral argument is made for one of the parties, only one counsel will be heard for the adverse party.

7. No brief or printed argument, required by the foregoing sections, shall be filed by the clerk unless the same shall be accompanied by satisfactory proof of service upon counsel for the adverse party.

8. Every brief of more than twenty pages shall contain on its front fly leaves a subject index with page references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited.

22.

ORAL ARGUMENTS.

1. The plaintiff in error or appellant in this court shall be entitled to

open and conclude the argument of the case. But when there are cross appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

2. Only two counsel will be heard for each party on the argument of a case.

3. One and one-half hours on each side will be allowed for the argument, and no more, without special leave of the court, granted before the argument begins. But in cases certified from the circuit courts of appeals, cases involving solely the jurisdiction of the court below, and cases under the act of March 2, 1907, 34 Stat. 1246, forty-five minutes only on each side will be allowed for the argument unless the time be extended. The time thus allowed may be apportioned between the counsel on the same side, at their discretion; provided, always, that a fair opening of the case shall be made by the party having the opening and closing arguments.

23.

INTEREST.

1. In cases where a writ of error is prosecuted to this court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied, from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the state where such judgment is rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding 10 per cent, in addition to interest, shall be awarded upon the amount of the judgment.

3. The same rule shall be applied to decrees for the payment of money in cases in equity, unless otherwise ordered by this court.

4. In cases in admiralty, damages and interest may be allowed if specially directed by the court.

24.

COSTS.

1. In all cases where any suit shall be dismissed in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties, except where the dismissal shall be for want of jurisdiction, when the costs incident to the motion to dismiss shall be allowed.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case.

4. Neither of the foregoing sections shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

5. In all cases of the dismissal of any suit in this court, it shall be the duty of the clerk to issue a mandate, or other proper process, in the nature of a procedendo, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

6. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

7. In pursuance of the act of March 3, 1883, authorizing and empowering this court to prepare a table of fees to be charged by the clerk of this court, the following table is adopted:

For docketing a case and filing and indorsing the transcript of the record, five dollars.

For entering an appearance, twenty-five cents.

For entering a continuance, twenty-five cents.

For filing a motion, order, or other paper, twenty-five cents.

For entering any rule, or for making or copying any record or other paper, twenty cents per folio of each one hundred words.

For transferring each case to a subsequent docket and indexing the same, one dollar.

For entering a judgment or decree, one dollar.

For every search of the records of the court, one dollar.

For a certificate and seal, two dollars.

For receiving, keeping, and paying money in pursuance of any statute or order of court, two per cent on the amount so received, kept, and paid.

For an admission to the bar and certificate under seal, ten dollars.

For preparing the record or a transcript thereof for the printer, indexing the same, supervising the printing, and distributing the printed copies to the justices, the reporter, the law library, and the parties or their counsel, fifteen cents per folio; but when the necessary printed copies of the record, as printed for the use of the lower court, shall be furnished, the fee for supervising shall be five cents per folio.

For making a manuscript copy of the record, when required under rule 10, twenty cents per folio, but nothing in addition for supervising the printing.

For issuing a writ of error and accompanying papers, five dollars.

For a mandate or other process, five dollars.

For filing briefs, five dollars for each party appearing.

For every printed copy of any opinion of the court or any justice thereof, certified under seal, two dollars.

25.

OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery

thereof, be handed to the clerk to be printed. And it shall be the duty of the clerk to cause the same to be forthwith printed, and to deliver a copy to the reporter as soon as the same shall be printed.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. Opinions printed under the supervision of the justices delivering the same need not be copied by the clerk into a book of records; but at the end of each term the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded.

26.

CALL AND ORDER OF THE DOCKET.

1. The court, on the second day in each term, will commence calling the cases for argument in the order in which they stand on the docket, and proceed from day to day during the term in the same order (except as hereinafter provided); and if the parties, or either of them, shall be ready when the case is called, the same will be heard; and if neither party shall be ready to proceed in the argument, the case shall be continued to the next term of the court unless some good and satisfactory reason to the contrary shall be shown to the court.

2. Ten cases only shall be considered as liable to be called on each day during the term. But on the coming in of the court on each day the entire number of such ten cases will be called, with a view to the disposition of such of them as are not to be argued.

3. Criminal cases may be advanced by leave of the court on motion of either party.

4. Cases once adjudicated by this court upon the merits, and again brought up by writ of error or appeal, may be advanced by leave of the court on motion of either party.

5. Revenue and other cases in which the United States are concerned, which also involve or affect some matter of general public interest, or which may be entitled to precedence under the provisions of any act of Congress, may also by leave of the court be advanced on motion of the Attorney General.

6. All motions to advance cases must be printed, and must contain a brief statement of the matter involved, with the reasons for the application.

7. No other case will be taken up out of the order on the docket, or be set down for any particular day, except under special and peculiar circumstances to be shown to the court.

8. Two or more cases, involving the same question, may, by the leave of the court, be heard together, but they must be argued as one case.

9. If, after a case has been passed, the parties shall desire to have it heard, they may file with the clerk their joint request to that effect, and the case shall then be by him reinstated for call ten cases after that under argument, or next to be called at the end of the day the request is filed. If the parties will not unite in such a request, either may move to take

up the case, and it shall then be assigned to such place upon the docket as the court may direct.

10. No stipulation to pass a case will be recognized as binding upon the court. A case can only be so passed upon application made and leave granted in open court.

27.

ADJOURNMENT.

The court will, at every term, announce on what day it will adjourn at least ten days before the time which shall be fixed upon, and the court will take up no case for argument, nor receive any case upon printed briefs, within three days next before the day fixed upon for adjournment.

28.

DISMISSING CASES IN VACATION.

Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and appellee in an appeal, shall in vacation, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

29.

SUPERSEDEAS.

Supersedeas bonds in the district courts and circuit courts of appeals must be taken, with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, as in case of capture or seizure, or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, indemnity in all such cases is only required in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit, and just damages for delay, and costs and interest on the appeal.

30.

REHEARING.

A petition for rehearing after judgment can be presented only at the term at which judgment is entered, unless by special leave granted during the term; and must be printed and briefly and distinctly state its grounds, and be supported by certificate of counsel; and will not be granted, or permitted to be argued, unless a justice who concurred in the judgment desires it, and a majority of the court so determines.

31.

FORM OF PRINTED RECORDS AND BRIEFS.

All records, arguments, and briefs, printed for the use of the court, must be in such form and size that they can be conveniently bound together, so as to make an ordinary octavo volume; and, as well as all quotations contained therein, and the covers thereof, must be printed in clear type (never smaller than small pica) and on unglazed paper.

32.

WRITS OF ERROR AND APPEALS IN CASES INVOLVING JURISDICTION OF LOWER COURT.

Cases brought to this court by writ of error or appeal, where the only question in issue is the question of the jurisdiction of the court below, will be advanced on motion, and heard under the rules prescribed by rule 6, in regard to motions to dismiss writs of error and appeals.

33.

MODELS, DIAGRAMS, AND EXHIBITS OF MATERIAL.

1. Models, diagrams, and exhibits of material forming part of the evidence taken in the court below, in any case pending in this court, on writ of error or appeal, shall be placed in the custody of the marshal of this court at least one month before the case is heard or submitted.

2. All models, diagrams, and exhibits of material, placed in the custody of the marshal for the inspection of the court on the hearing of a case, must be taken away by the parties within one month after the case is decided. When this is not done, it shall be the duty of the marshal to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

34.

CUSTODY OF PRISONERS ON HABEAS CORPUS.

1. Pending an appeal from the final decision of any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or judge, or be enlarged upon recognizance as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

35.

ASSIGNMENT OF ERRORS.

1. Where an appeal or a writ of error is taken from a district court direct to this court, under section 238 of the act entitled "An Act to Codify, Revise, and Amend the Laws Relating to the Judiciary," approved March 3, 1911, chapter 231, the plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record, and be printed with it. When this is not done counsel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned.

2. The plaintiff in error or appellant shall cause the record to be printed, according to the provisions of sections 2, 3, 4, 5, 6, and 9, of rule 10.

36.

APPEALS AND WRITS OF ERROR FROM DISTRICT COURTS.

1. An appeal or a writ of error from a district court direct to this court, in the cases provided for in §§ 238 and 252 of the act entitled, "An Act to Codify, Revise, and Amend the Laws Relating to the Judiciary," approved March 3, 1911, chapter 231, may be allowed, in term time or in vacation by

any justice of this court, or by any circuit judge assigned to the district court, or by any district judge within his district, and the proper security be taken and the citation signed by him, and he may also grant a supersedeas and stay of execution or of proceedings, pending such writ of error or appeal.

2. Where such writ of error is allowed in the case of a conviction of an infamous crime, or in any other criminal case in which it will lie under section 238, the district court, or any judge thereof, or any justice of this court, or any circuit judge assigned to the district court, shall have power, after the citation is served, to admit the accused to bail in such amount as may be fixed,

37.

CASES FROM CIRCUIT COURTS OF APPEALS.

1. Where, under section 239 of the act entitled "An Act to Codify, Revise, and Amend the Laws Relating to the Judiciary," approved March 3, 1911, chapter 231, a circuit court of appeals shall certify to this court a question or proposition of law, concerning which it desires the instruction of this court for its proper decision, the certificate shall contain a proper statement of the facts on which such question or proposition of law arises.

2. If application is thereupon made to this court that the whole record and cause may be sent up to it for its consideration, the party making such application shall, as a part thereof, furnish this court with a certified copy of the whole of said record.

3. Where an application is submitted to this court for a writ of certiorari to review a decision of a circuit court of appeals or any other court, it shall be necessary for the petitioner to furnish as an exhibit to the petition a certified copy of the entire transcript of record of the case, including the proceedings in the court to which the writ of certiorari is asked to be directed. The petition shall contain only a summary and short statement of the matter involved and the general reasons relied on for the allowance of the writ. A failure to comply with this provision will be deemed a sufficient reason for denying the petition. Thirty printed copies of such petition and of any brief deemed necessary shall be filed. Notice of the date of submission of the petition, together with a copy of the petition and brief, if any, in support of the same shall be served on the counsel for the respondent at least two weeks before such date in all cases except where the counsel to be notified resides west of the Rocky Mountains, in which cases the time shall be at least three weeks. The brief for the respondent, if any, shall be filed at least three days before the date fixed for the submission of the petition. Oral argument will not be permitted on such petitions, and no petition will be received within three days next before the day fixed upon for the adjournment of the court for the term.

38.

INTEREST, COSTS, AND FEES.

The provisions of rules 23 and 24 of this court, in regard to interest and

costs and fees, shall apply to writs of error and appeals and reviews under the provisions of sections 238, 239, 240, and 241 of the act entitled "An Act to Codify, Revise, and Amend the Laws Relating to the Judiciary," approved March 3, 1911, chapter 231.

39.

MANDATES.

Mandates shall issue as of course after the expiration of thirty days from the day the judgment or decree is entered, unless the time is enlarged by order of the court, or of a justice thereof when the court is not in session, but during the term.

40.

PRACTICE IN CASES FROM CIRCUIT COURTS OF APPEALS.

The provisions of these rules relating to the practice on direct writs of error to and appeals from the district courts shall also be deemed to relate to and cover the practice on writs of error to and appeals from the circuit court of appeals.

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RULES OF THE UNITED STATES CIRCUIT COURTS OF APPEALS.

(INDEXED IN GENERAL INDEX.)

RULES OF THE UNITED STATES CIRCUIT COURTS OF APPEALS.

STATEMENT.

The rules of the United States Circuit Courts of Appeals as they exist in each of the nine circuits are so similar that but one statement of a rule is made where the rule is alike in all of the circuits. Where there is a variance in different circuits the variance is shown either by repeating the rule as it is in the several differing circuits, or by explaining the difference.

RULE 1.

NAME.

The court adopts "United States Circuit Court of Appeals for the ..... Circuit" as the title of the court.

The above is § 1, rule 2, in Sixth circuit and its rule 1 is as follows:

DEFINITIONS.

In these rules "counsel" shall include attorneys, solicitors, proctors, and advocates; "appellant" shall include, also, plaintiff in error, petitioner for review or mandamus, and any other party seeking review in this court; "appellee" shall include, also, defendant in error and any other party respondent in this court.

RULE 2.

SEAL.

The seal shall contain the words "United States" on the upper part of the outer edge; and the words "Circuit Court of Appeals" on the lower part of the outer edge, running from left to right; and the words "..... Circuit" in two lines, in the center, with a dash beneath.

The above is § 2, rule 2, in the Sixth circuit.

RULE 3.

TERMS AND SESSIONS.

First circuit.—One term of this court shall be held annually at the city of Boston at ten o'clock in the forenoon on the first Tuesday of October. Stated sessions thereof shall be there held at the same hour on the first Tuesday of every month, and may be adjourned to such times and places as the court may from time to time designate. But, unless otherwise ordered, any adjournment shall be held to have been made to the first day of the next stated session.

Second circuit.—One term of this court shall be held annually at the city of New York on the second Monday of October, and shall be adjourned to such times and places as the court may from time to time designate.

Third circuit.—The terms of this court shall commence and be held on the first Tuesday of March and the first Tuesday of October in each year, at the city of Philadelphia.

Fourth circuit.—1. There shall be held in the city of Richmond, Virginia, three regular terms of this court; one on the first Tuesday of February, one on the first Tuesday of May, and one on the first Tuesday of November, in each year.

2. Special sessions of this court shall be held at Richmond, Virginia, on the second Tuesday of every month of the year except in those months in which regular terms of the court are held. During said sessions such orders, judgments or decrees as may be necessary concerning pending cases may be considered and disposed of, opinions in cases theretofore argued may be filed and decrees and judgments relating thereto entered, mandates issued, and any such further action taken as is authorized by the statute in such case made and provided.

3. If at any such special session no judge shall be in attendance, the clerk shall adjourn the court until the next day, or to such time as the senior circuit judge shall direct, and then in case no direction be made, to the next session or term of the court.

Fifth circuit.—A session of this court shall be held annually at the city of Atlanta, Georgia, on the first Monday in October; at the city of Montgomery, Alabama, on the third Monday in October; at the city of Fort Worth, Texas, on the first Monday in November; at the city of New Orleans, Louisiana, on the third Monday in November, and shall be adjourned to such other time and places as the court may from time to time order and designate.

Sixth circuit.—One term of this court shall be held annually on the Tuesday after the first Monday in October, and adjourned sessions on the Tuesday after the first Monday of each other month in the year, except August and September. At the July session, no causes will be heard, except upon the special order of the court.

All sessions shall be held at Cincinnati, unless otherwise specially ordered by the court.

Seventh circuit.—A term of this court shall be held annually at the city of Chicago on the first Tuesday in October, and continue until the

first Tuesday in October of the succeeding year. Every term shall be adjourned to such time and places as the court may from time to time designate. Unless otherwise specially ordered, the court will hold at Chicago three sessions for the hearing of causes during each term, beginning on the first Tuesdays in October and January, respectively, and the second Tuesday in April.

Eighth circuit.—1. Three terms of this court will be held annually, one at the city of St. Paul on the first Monday of May, one at the city of Denver, on the first Monday of September, and one at the city of St. Louis on the first Monday of December.

2. Cases from Minnesota, North Dakota, South Dakota, Nebraska, Iowa, Kansas, Missouri, Arkansas, and Oklahoma, in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court, and proof by affidavit or admission that three copies of the printed transcripts have been served on the defendants in error or appellees, or their counsel, are filed on or before the first day of April, and cases from Colorado, Utah, Wyoming, and New Mexico in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the printed transcripts have been served on the defendants in error or appellees, or their counsel, and stipulations of the parties for their hearing at the May term in St. Paul are filed on or before the first day of April, and those only, will be heard at the succeeding May term of the court in St. Paul.

3. Cases from Colorado, Wyoming, Utah, and New Mexico in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the printed transcripts have been served on the defendants in error or appellees, or their counsel, are filed on or before the first day of July and cases from the remainder of the circuit in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the printed transcripts have been served on the defendants in error or appellees, or their counsel, and stipulations of the parties for their hearing at the September term in Denver are filed on or before the first day of July, and those only, will be heard at the succeeding September term in Denver.

4. Cases from Minnesota, North Dakota, South Dakota, Nebraska, Iowa, Kansas, Missouri, Arkansas, and Oklahoma in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the printed transcripts have been served on the defendants in error or appellees, or their counsel, are filed on or before the first day of October, and cases from Colorado, Wyoming, Utah, and New Mexico in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court and proof by affidavit or admis-

sion that three copies of the printed transcripts have been served on the defendants in error or appellees, or their counsel, and stipulations of the parties for their hearing at the December term in St. Louis are filed on or before the first day of October, and those only, will be heard at the succeeding December term in St. Louis.

5. These terms of the court may be adjourned to such times and places as the court may from time to time designate.

Ninth circuit.—One term of this court shall be held annually at the city of San Francisco on the first Monday of October, and shall be adjourned to such times and places as the court may from time to time designate.

RULE 4.

QUORUM.

1. If, at any time, a quorum does not attend on any day appointed for holding it, any judge who does attend may adjourn the court from time to time, or, in the absence of any judge, the clerk may adjourn the court from day to day. If, during a term, after a quorum has assembled, less than that number attend on any day, any judge attending may adjourn the court from day to day until there is a quorum, or may adjourn without day.

2. Any judge attending when less than a quorum is present may make all necessary orders touching any suit, proceeding, or process depending in or returned to the court, preparatory to hearing, trial, or decision thereof.

In addition to those enumerated the marshal or his deputy may adjourn the court from day to day in the **First circuit.**

In the **Sixth circuit** § 2 is omitted.

RULE 5.

CLERK.

1. The clerk's office shall be kept at the place designated in the act creating the court at which a term shall be held annually.

2. The clerk shall not practice, either as attorney or counselor, in this court or in any other court while he shall continue to be clerk of this court.

3. He shall, before he enters on the execution of his office, take an oath in the form prescribed by § 794 of the Revised Statutes and shall give bond in a sum to be fixed, and with sureties to be approved, by the court, faithfully to discharge the duties of his office and seasonably to record the decrees, judgments, and determinations of the court. A copy of such bond shall be entered on the journal of the court, and the bond shall be deposited for safe-keeping as the court may direct.

4. He shall not permit any original record or paper to be taken from the courtroom or from the office, without an order from the court.

In the **Fifth circuit** the amount of the bond is fixed at $10,000. In the others it is fixed by the court.

Section 1 in the **Third circuit** reads, "in the city of Philadelphia." In the **Fourth circuit,** "at Richmond, Virginia." In the **Fifth circuit,** "at New

Orleans, Louisiana." In the **Sixth circuit**, "at Cincinnati." In the **Seventh**, "in Chicago."

In the **Seventh circuit** the following sections are added:

5. All fees collected by the clerk, which are not properly taxable as costs in any case, and which are not by law required to be by him deposited in the Treasury of the United States, shall constitute a fund to be expended by the clerk, under the direction of the court, in the purchase of law books for the library of the court.

6. The clerk shall keep an accurate and itemized account of all moneys received by him officially, including costs and fees in cases in the court and fees and moneys collected on any account whatever, and shall deposit the same as received daily to his credit as clerk, and separately from all individual accounts, in a national bank designated by the senior judge, and at the end of each month, and whenever required by the court or senior judge, shall submit to the senior judge a detailed report showing by items all moneys received and all moneys paid out during the month, and the total balances on hand from each and all sources of receipt; each report shall be accompanied by a statement, over the signature of the cashier or other officer of the bank of which the deposit is kept, of the amount in the bank to the credit of the clerk at the close of the last day included in the report.

RULE 6.

MARSHAL, CRIER AND OTHER OFFICERS.

The marshal and crier shall be in attendance during the sessions of the court, with such number of bailiffs and messengers as the court may from time to time order.

This is contained in all circuits.

In the **Second circuit**, § 1 is as follows:

1. Every marshal and deputy marshal shall, before he enters on the duties of his appointment, take an oath in the form prescribed by § 782 of the Revised Statutes, and the marshal shall, before he enters on the duties of his office, give bond in a sum to be fixed, and with sureties to be approved, by the court, for the faithful performance of said duties by himself and his deputies. Said bond shall be filed and recorded in the office of the clerk of the court.

In the **Sixth circuit** §§ 1 and 2 are as follows:

1. The crier and bailiffs of the district court of any district where this court may be in session, are hereby authorized to act also during such session as crier and bailiffs of this court.

2. A crier or bailiff specially appointed for this court shall, before he enters on his duties, take an oath in the form prescribed by § 782 of the Revised Statutes.

In the **Seventh circuit** § 1 is the same as § 2 in the **Sixth circuit**.

RULE 7.

ATTORNEYS AND COUNSELORS.

First, Second, Third, Fourth, and **Seventh circuits.**

All attorneys and counselors admitted to practice in the Supreme Court of the United States, or in any circuit or district court of the United States, shall become attorneys and counselors in this court on taking an oath or affirmation in the form prescribed by rule 2 of the Supreme Court of the United States and on subscribing the roll; but no fee shall be charged therefor.

In the **Fourth circuit** a fee of $5 must be paid to the clerk.

The rule in the **Fifth circuit** is as follows:

All attorneys and counselors admitted to practice in the Supreme Court of the United States, or any circuit court of the United States, upon filing certificate of such admission with the clerk of this court, and upon taking an oath or affirmation in the following form, viz.:

"I, ..., do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of this court uprightly and according to law, and that I will support the Constitution of the United States."

(a copy of which shall be filed with the clerk), shall become attorneys and counselors of this court; provided, however, that any attorney or counselor eligible to admission as an attorney and counselor of this court may be admitted to practice, on motion in open court, upon taking the oath or affirmation as prescribed, and subscribing the roll.

On each admission the clerk will collect ten dollars ($10) to be applied to the purchase of law books for the use of the court and bar.

Sixth circuit.—An attorney and counselor admitted to practice and in good standing in the Supreme Court or in a district court of the United States, or in the court of last resort in the state of his residence, may become attorney and counselor in this court on taking an oath or affirmation as prescribed by rule 2 of the Supreme Court of the United States, and upon subscribing the roll. The fee for such admission shall be $10. Every person taking the oath and paying such fee shall be entitled to a certificate of his admission, signed by the clerk.

Eighth circuit.—1. All attorneys and counselors admitted to practice in the Supreme Court of the United States, or in any circuit court or district court of the United States, or in the supreme court of any state in this circuit, may, upon motion of some member of the bar of this court, be admitted as attorneys and counselors in this court on taking an oath or affirmation in the form prescribed by rule 2 of the Supreme Court of the United States and on subscribing the roll; but no fee shall be charged therefor.

2. And any attorney and counselor admitted to practice in the Supreme Court of the United States or in the supreme court of any state or in the district or circuit courts of the United States for this circuit, may be admitted by order of this court to practice and may be enrolled as an attorney and counselor of this court, thirty days after he furnishes to the clerk

of this court a certificate of a clerk or judge of any one of the courts named that the applicant is an attorney of any one of said courts; and upon subscribing and forwarding to the clerk the following oath: "I do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of the circuit court of appeals for the eighth circuit, uprightly and according to law; and that I will support the Constitution of the United States. So help me God."

Ninth circuit.—All attorneys admitted to practice in the Supreme Court of the United States, or in any district court of the ninth circuit, shall be deemed attorneys of the circuit court of appeals for the ninth circuit; but such attorneys, on or before their first appearance in open court, in said court, shall take an oath or affirmation, in the form prescribed by rule 2 of the Supreme Court of the United States and subscribe the roll of attorneys. All other persons who have been admitted to practice in the highest court of any state or territory, upon presenting satisfactory evidence of good moral character and fair professional standing, may be admitted to practice in said court, upon taking the oath so prescribed, and subscribing the roll of attorneys.

RULE 8.

PRACTICE.

The practice shall be the same as in the Supreme Court of the United States, as far as the same shall be applicable.

RULE 9.

PROCESS.

All process of this court shall be in the name of the President of the United States, and shall be in like form and tested in the same manner as process of the Supreme Court.

In the **Sixth circuit** this is contained in rule 8, and the following is rule 9 in that circuit:

SERVICE OF PAPERS.

1. Copies of all papers or proceedings filed by any party in any cause shall, at or before the time of filing, be served upon counsel representing each adverse interest, and proof or acknowledgment of such service shall be endorsed upon each paper filed. The clerk may insist upon such proof as a prerequisite to filing, or may file and require the prompt furnishing of such proof, as he may in each case think proper.

2. Service may be personal or by mail. If personal, it shall consist of delivery at his office to counsel or to a clerk therein. If by mail, it shall consist in depositing the same in the postoffice with postage paid, addressed to the counsel at his postoffice address, which address shall include his street

and number, unless the same are unknown. Each proof of service shall show a full compliance with this rule.

RULE 10.

BILL OF EXCEPTIONS.

1. The judges of the district courts shall not allow any bill of exceptions which shall contain the charge of the court at large to the jury in trials at common law upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts; and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court.

In the **Third circuit** the following is added:

Exceptions to the charge or to the judge's action upon the requests for instruction shall be taken immediately on the conclusion of the charge before the jury retire, shall be specified in writing or dictated to the stenographer, and shall be specific and not general.

2. Exceptions to the admission or rejection of evidence shall be specific and not general, and the bill of exceptions to such admission or rejection shall contain only so much of the evidence admitted or offered and rejected as is necessary for the presentation and decision of the questions saved for review. Unless there be saved a question which requires the consideration of all the evidence, a bill of exceptions containing all of it shall not be allowed.

In the **Fourth circuit** the following is added:

2. Only so much of the evidence shall be embraced in a bill of exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and such evidence as is embraced therein shall be set forth in condensed and narrative form, save as a proper understanding of the questions presented may require that parts of it be set forth otherwise.

In the **Sixth circuit** the following is the rule:

1. The assignments of error required by rule 11 shall be filed at or before the settling of the bill of exceptions. The evidence in a bill of exceptions shall not be set forth in full, but shall be stated in simple and condensed form, all parts not essential to the decision of some one of the questions presented by the assignments of error being omitted, and the testimony of witnesses being stated only in narrative form, save that, if either party desires it and the judge so directs, any part of the testimony shall be reproduced in the exact words of the witness.

2. No general exception to the whole or any charge to a jury on trials at law shall be allowed in any bill of exceptions. Exceptions to charge, in order to be allowed in a bill of exceptions, must be taken before the jury retires and must state distinctly the several matters of law to which exception is taken. In cases where exception is taken to part of a charge, and such exception may be affected by other parts or by the charge as a whole, the entire charge shall be included in the bill of exceptions.

In the Seventh circuit the following is added:

2. A bill of exceptions shall contain of the evidence only such a statement as is necessary for the presentation and decision of questions saved for review, and unless there be saved a question which requires the consideration of all the evidence, a bill of exceptions containing all the evidence shall not be allowed.

3. No document shall be copied more than once in a bill of exceptions or in a transcript of the record of the case, but instead there shall be inserted a reference to the one copy set out. A motion for a new trial and orders and entries relating thereto shall not be set out in the transcript unless required by written præcipe, of which a copy shall also be set out.

4. The cost of unnecessary matter in the bill of exceptions or transcript or in the printed record shall not be recovered of the appellee or defendant in error, and in its discretion the court will in case of dispute appoint a referee to determine and report what was necessary therein, and will tax the cost of the reference as shall seem just.

RULE 11.

ASSIGNMENT OF ERRORS.

The plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record and be printed with it. When this is not done, counsel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned.

RULE 12.

OBJECTIONS TO EVIDENCE IN THE RECORD.

In all cases of equity or admiralty jurisdiction, heard in this court, no objection shall be allowed to be taken to the admissibility of any deposition, deed, grant, exhibit, or translation, found in the record as evidence, unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

RULE 13.

SUPERSEDEAS AND COST BONDS.

1. Supersedeas bonds in the district courts must be taken with good and sufficient security, that the plaintiff in error or appellant will prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and interest and costs on the appeal; but in all suits where the property in controversy necessarily follows the suit, as in real actions and replevin, and in suits on mortgages, or where the property is the custody of the marshal under admiralty process, or where the proceeds thereof, or a bond for the value thereof, is in the custody of the court, indemnity in all such cases will be required only in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit and damages for delay and interest and costs on the appeal.

2. On all appeals from any interlocutory order or decree granting or continuing an injunction in a district court, the appellant shall, at the time of the allowance of said appeal, file with the clerk of such district court a bond to the opposite party in such sum as such court shall direct, to answer all costs if he shall fail to sustain his appeal.

In the **Sixth circuit** the above § 2 is omitted, and the above rule 13 is rule 14 in that circuit.

RULE 14.

WRITS OF ERROR, APPEALS, RETURN, AND RECORD.

1. The clerk of the court to which any writ of error may be directed shall make a return of the same by transmitting a true copy of the record, opinion or opinions of the court, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and the seal of the court.

In the **Third circuit**, § 1 is as follows:

1. Any appeal to this court, or writ of error from this court, allowable by law, may be allowed, in term time or vacation, by the circuit justice, or by any of the circuit judges within this circuit, or by any district judge within the district where the case to be reviewed was heard or tried, who may also take the proper security, sign the citation, and, if he deem it proper so to do, grant a supersedeas and stay of execution or of proceedings pending such writ of error or appeal.

In the **Fourth circuit** § 1 is as follows:

1. The clerk of the court to which any writ of error may be directed shall (except as otherwise provided by rule 23) make return of the same, by certifying under his hand and the seal of said court, in accordance with the act of Congress of February 13, 1911 (36 Stat. at L. 901), and transmitting to the clerk of this court one of the printed transcripts of the record provided for by said act. In all cases of appeal and also in all cases of petition

for revision in bankruptcy said clerk shall likewise certify, seal, and transmit a copy of the printed transcript of the record to the clerk of this court.

Rule 13 of the other circuits is rule 14 in the **Sixth circuit.**

Section 1 is contained in rule 13 in the **Sixth circuit,** as follows:

1. An appeal from or writ of error to a district court in the cases provided for in §§ 128, 129 and 130 of the Judicial Code approved March 3, 1911, may be allowed in term time or in vacation by the circuit justice, wherever acting, or by any circuit judge acting within the circuit, or by any district judge acting within the district where the case was heard and authorized to hold court in that district; and the proper security may be taken and the citation be signed by him and he may also grant a supersedeas and stay of execution or of proceedings pending such writ of error or appeal.

In the **Seventh circuit** the following is added to the above: The clerk may require of the appellant or plaintiff in error a written præcipe stating in detail what the transcript shall contain, and when a præcipe is filed shall insert a copy thereof in the transcript.

2. In all cases brought to this court by writ of error or appeal to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

In the **Third circuit** § 2 is as follows:

2. The clerk of the court to which any writ of error may be directed, or from which any appeal may be taken, upon being paid or tendered his fees therefor, shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and the seal of the court.

In the **Fourth circuit** § 2 is as follows:

2. In every printed transcript of the record the order of the parts thereof shall substantially follow the order in which the same were filed, entered or made, and shall contain a copy of such opinion or opinions of the trial judge as may have been filed. It shall be suitably indexed, and where any deposition or report of evidence requires more than one printed page the name of the deponent or witness shall be printed at the top of each page. And the foregoing shall, so far as may be applicable, apply to the printed addenda to records hereinafter provided for.

In the **Sixth circuit** § 2 is contained in rule 13, as follows:

2. Where such writ of error is duly allowed in a criminal case, the district court in which the conviction occurred, or this court, or any judge of either court, shall have power, after the citation is served, to admit the accused to bail in such amount as may be fixed.

In the **Eighth circuit** the following is added to the above in section 2 "and in cases at law a complete copy of the charge of the court to the jury."

Section 2 in the **Ninth circuit** is as follows:

2. In all cases brought to this court by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record the original

writ of error and citation, or citation issued in the cause, and a certificate under seal stating the cost of the record and by whom paid.

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court shall be filed.

In the **Third circuit** § 3 is the same as § 2 as given above.

In the **Fourth circuit** § 3 is as follows:

3. Except in cases where counsel shall agree by written and signed stipulation,—which shall be a part of the record,—as to what portions of the record and proofs of the case in the court below, shall be printed in the transcript of the record for use in this court, the trial judge shall have the power, upon application after reasonable notice to the opposing party or his counsel, to determine what shall be included in such transcript, and his determination shall be signed by him, and made part of the record; he shall include in such signed paper, such portions of the record and of the proofs as he may deem material for the proper disposition of the questions to be decided by this court, as also such parts as are specially required by these rules. But if any party desires printed any document or part of the record or proofs directed by the trial judge to be omitted, such party may print the same under separate cover and cause it to be certified and transmitted to this court as an addendum to the record. Such printing and certification shall be primarily at the cost of the party who requires it. The cover sheet of such addendum shall contain the title of the cause and shall plainly show that it is an addendum to the transcript and shall show at whose instance it was printed.

In the **Eighth circuit** § 3 is as follows:

3. No case will be heard until twenty-five copies of the printed transcript of the record, containing in themselves, and not by reference, all the papers, exhibits, depositions, sketches, drawings, photographs, maps, blue prints and other proceedings, which are necessary to the hearing in this court, printed title pages in the form prescribed in § 5 of rule 26, chronological printed indexes of each and every item of their contents specifying the pages where evidence, testimony and exhibits including those in the body of any pleading, order or bill of exceptions may be found and briefly naming or describing each exhibit in addition to its number together with a statement of the numbers, names and dates of issue of any patents, shall have been filed in this court.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safekeeping, transporting and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

In the **Third circuit** § 4 is the same as § 3 as given above.

In the **Sixth circuit** this section is contained in § 6 of rule 15.

5. All appeals, writs of error, and citations must be made returnable not

exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day.

In the **Third circuit** § 5 is the same as § 4 as given above.

In the **Fourth circuit** the word "thirty" is changed to "forty."

In the **Sixth circuit** this section is contained in § 1 of rule 15.

In the **Seventh circuit** the following is added to the above:

"If a party be nonresident the citation and any other writ or notice necessary in the prosecution of the appeal or writ of error may be served upon such party's counsel or attorney of record, who for such purpose may not be discharged unless another resident may be designated of record in the case upon whom service may be made."

In the **Eighth circuit** the word "thirty" is changed to "sixty."

In the **Ninth circuit** this is the last section of rule 14.

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in general admiralty rule No. 52 of the Supreme Court.

In the **First circuit** the following is added to § 6:

The testimony in such a record shall embrace the *viva voce* proof in the district court, if the same, or the substance thereof, has been reduced to writing with the approval of its judge. The reasonable cost of so reducing the same to writing may be taxed as a part of the costs of the record, except so far as allowed as costs in the district court.

This section is the last section of rule 14 in the **Second circuit.**

In the **Third circuit,** § 6 is as follows, and § 6 as given above is § 7 in that section:

6. All appeals, writs of error, and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day; but the citation must be signed, and the bond for costs must be approved and filed, and the assignments of error, immediately after the appeal or writ of error is allowed: *Provided, however,* That every appeal taken from an interlocutory decree, under the seventh section of the act entitled "An Act to Establish Circuit Court of Appeals, and to Define and Regulate in Certain Cases the Jurisdiction of the Courts of the United States, and for other Purposes," approved March 3, 1891, and amendments to said section, shall be made returnable in ten days from the allowance of the appeal and the signing of the citation.

This is the last section of rule 14 in the **Third circuit,** and also in the **Fifth circuit, Seventh circuit,** and **Eighth circuit.**

In the **Sixth circuit** this section is contained in § 7 of rule 15, as follows:

The records in cases of admiralty and maritime jurisdiction shall be made up in the same manner, as nearly as practicable, as are the records in equity cases.

In the **First circuit** the remainder of rule 14 is as follows:

7. Further proof in instance causes in admiralty shall include only that which could not with diligence have been had at the trial below, or which was there rejected, or was omitted through misapprehension, provided the evidence be accompanied with a certificate of counsel showing reasonable ex-

cuse for the misapprehension. Except by order of the court first obtained, merely cumulative proofs shall not be so taken; but for this purpose the evidence of witnesses who had different duties, interests, or opportunities of observation, will not ordinarily be held cumulative in cases of collision or other maritime tort.

8. Such further proof may be taken after the appeal is allowed, in the manner provided by law for depositions *de bene esse*, or by any examiner appointed by any circuit or district judge, or selected by the parties, or upon interrogatories and commissions as provided in rule 44 of the circuit courts of this circuit, *mutatis mutandis*. It must be taken and filed forthwith after it is obtainable, but it cannot, except by order of the court, be taken or filed within thirty days before any session at which the cause may be heard as provided in paragraph 2 of rule 17, nor thereafterwards until the cause has been postponed to the next term or session.

9. Objections to further proof shall be filed with the magistrate and returned with the evidence. Within seven days after the evidence is taken, the party so objecting may file in print a motion to suppress the same, with a copy of the objections and a brief. The other party may within seven days thereafter file in print a counter-statement and brief. The objections and counter-statement, as far as they contain matters of fact *dehors* the record, shall be verified by affidavit. The court will consider the objections in advance of the trial, or in connection therewith, as it may in each case determine, and without oral argument, and will order suppressed evidence not rightfully taken. The party taking the evidence so suppressed shall pay the costs arising therefrom, including the printing thereof.

10. Nothing herein shall exclude applications for leave to take further proof, or objections thereto, in advance of the taking thereof, or objections touching the formalities of taking it; but the latter must be brought to the attention of the court forthwith after the evidence is filed.

In the **Fourth circuit** the remainder of rule 14 is as follows:

No transcript of the record and proofs shall (unless it be specifically otherwise ordered by the trial judge) contain a copy of the petition for appeal, the order granting writ of error or appeal, the writ of error, the appeal bond, the citation, the return of service or waiver of service of citation. In lieu thereof the originals of said documents shall be certified to this court within forty days of the date of the citation (to be returned to the court below with the mandate of this court), and in said transcript there shall be inserted a memorandum stating the date of the petition for writ of error or for appeal, the date of the order granting writ of error or allowing appeal, the date of the writ of error and date when copy thereof or copy of order allowing appeal is lodged in the office of the clerk of the court below for adverse parties, the date, penalty, the names of the obligors, the condition (whether for payment of costs and damages or for costs alone) of the appeal bond, the date of the citation, and the date of the service thereof or of the waiver of service thereof.

No general replication in equity shall be copied into the transcript of the record, but in lieu thereof there shall be inserted a memorandum showing the date of filing of such replication and by whom filed. When a case has by writ of error or appeal been brought to this court the second time, there

shall only be copied in the record the proceedings subsequent to the former writ of error or appeal. It shall be the duty of the trial judge in determining what shall constitute said transcript of the record, to direct the omission of all matter which in his judgment is unnecessary to the presentation of the issues to be passed upon by this court and especially to prevent unnecessary duplications in such transcript. And the clerk below shall not certify any transcript of the record and proofs unless it contains either the stipulation of counsel or the determination of the trial judge mentioned in § 3 of this rule.

Whenever the printed transcript of the record or any addendum thereto as certified by the clerk of the court below shall contain any corrections or insertions, it shall be the duty of the party filing the printed transcript or addendum in this court to correct all the copies of the same so as to correspond with the certified transcript or addendum.

RULE 15.

TRANSLATIONS.

Whenever any record transmitted to this court upon a writ of error or appeal shall contain any document, paper, testimony or other proceeding in a foreign language, and the record does not also contain a translation of such document, paper, testimony or other proceedings, made under the authority of the inferior court, or admitted to be correct, the record shall not be printed; but the case shall be reported to this court by the clerk and the court will thereupon remand it back to the inferior court, in order that a translation may be there supplied and inserted in the record.

In the **Third circuit,** rule 15 as here given is rule 16, and rule 15 in that circuit is as follows:

BAIL IN ERROR.

1. Where a writ of error has been allowed in a criminal case, the justice or judge who allowed the writ, or any judge of the court which entered the judgment to be reviewed, shall have power to admit the plaintiff in error to bail for his appearance in such court on the determination of the proceedings on the writ of error to abide by and obey any order that may be made therein. The bond or recognizance for such appearance shall be substantially in the following form:

United States of America, ... } ss.
.....District of..... }

We (here insert name of defendant), residing at ..... and (here insert the name of surety), residing at ..... in the state of ....., acknowledge ourselves to be jointly and severally indebted to the United States of America in the sum of ..... dollars, lawful money of the United States of America, to be levied of our goods and chattels, lands and tenements, upon

this condition: That if the said ....., the defendant, upon whose application a writ of error has been allowed by the United States circuit court of appeals for the third circuit and is now pending, shall be and appear at the district court of the United States for the ..... district of ..... upon the determination of the proceedings on said writ of error, and the receipt and filing of a mandate or other process or certificate showing the disposition thereof by the said court of appeals, or, within five days thereafter, to answer and obey whatever final order or judgment, except as to costs, shall be made in the premises, and not depart said court without leave thereof, then this recognizance to be void; otherwise, to remain in full force and virtue.

.....(L. S.)
.....(L. S.)
.....(L. S.)

Taken, acknowledged and subscribed, this ..... day of ..... A. D. 191..., in open court.

.....
Clerk of District Court.

In the **Sixth circuit**, rule 15 is as follows, and there is no provision relating to translations; the omitted sections are contained under rule 14, herein:

2. The clerk of the district court shall make return to any writ of error to, or appeal from, that court, by transmitting, certified under his hand and the seal of the court, a transcript of the record in the district court, prepared as directed by other provisions of this rule. He shall make such return on or before the return day, unless the time therefor be extended as otherwise provided in these rules.

3. In all appeals, not in admiralty (and save in cases under general equity rule 77), the transcript—the contents of which are to be determined pursuant to clauses (a) and (c) of general equity rule 75 (Note 1)—shall always include: (1) the statement of evidence; (2) the clerk's certificate showing what portions are included by request of each party; (3) any opinion or memorandum filed by the judge pertaining to the matter involved in the appeal; (4) the pleadings affecting the decree or order appealed from, and such order or decree; (5) all proceedings relating to the appeal and the security given thereon, together with a copy of the citation, if one there was, and the evidence of service; (6) in cases removed from the state court, the full transcript on removal; and (7) in bankruptcy, shall also contain the petition for adjudication and the order thereon. It shall omit: (1) all formal proceedings to bring into court parties who afterwards appear generally, unless such proceedings are involved in the desired review; and (2) all motions or petitions filed and all affidavits in connection therewith, and all orders made and proceedings had thereon, unless such matters are involved in the desired review. It shall carry, at the beginning of each paper, the name thereof, and the date when it was filed, omitting the title of the court and the cause and all formal endorsements (Note 2). Orders and decrees shall carry a short, descriptive title with the date and entry and

the name of the judge, but without other caption. (Note 3.) Exhibits or documents shall not be duplicated, but a cross reference shall be made.

4. Upon writ of error from this court, the contents of the transcript shall be determined and the transcript made up in the same manner provided by clauses (a) and (c) of general equity rule 75 and clause 3 of this rule, both applied as near as may be to an action at law. Such transcript shall contain also a copy of the bill of exceptions, the assignments of error and the writ of error.

5. The original citation with proof of service and the original writ of error shall be filed with the clerk of the court below and be by him transmitted with the transcript to the clerk of this court.

8. On motion duly made, or on its own motion, this court will order portions to be stricken from the transcript, or additions to be made thereto by supplementary return, as may appear proper.

RULE 16.

DOCKETING CASES.

1. It shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court by or before the return day, whether in vacation or in term time. But for good cause shown, any judge of this court may enlarge the time by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed upon producing a certificate, whether in term time or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of this court.

2. But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of this court, and if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument at the term.

3. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall be entered.

In the **First circuit** the following is added to section 1: "after notice to the adverse party."

In the **Third circuit** the above is rule 17, and the following is added to § 3: "and on or before the return day of the citation the counsel for the appellee or defendant in error shall also enter appearance for the appellee or defendant in error."

In the **Fourth circuit**, §§ 1 and 5 are as follows, and the remainder is the same, as the above beginning in the middle of § 1: "If the plaintiff in error or appellant."

1. Except as otherwise provided by rule 23, it shall be the duty of the appellant, plaintiff in error, or petitioner for revision in bankruptcy to cause to be printed and suitably indexed the transcript of the record (as well as any addendum to the record required by such party) and to deliver the same to the clerk or deputy clerk of the court below for certification, sealing and transmission to this court within forty days from the date of the citation or the filing of the petition for revision; and also on or before the expiration of the said forty days to file with the clerk of this court at least twenty-four printed copies of the said transcript and addendum above-mentioned, if any. He shall also at the same time furnish to the adverse party at least three copies of the printed transcript of the record, including any addendum thereto printed at his instance. It shall also be the duty of appellant, plaintiff in error, or petitioner for revision to docket the cause in this court on or before the return day, whether in term time or vacation. In case any appellee or defendant in error shall have required an addendum to the transcript of record, it shall be the duty of such party to file in the office of the clerk of this court, on or before the said return day, at least twenty-four printed copies of such addendum as well as one additional copy thereof, which shall have been duly certified by the clerk of the court below; and such party shall at the same time furnish to the adverse party at least three copies of said printed addendum.

The time within which any of the acts in this section above mentioned are required to be done may for good cause shown be enlarged by the justice or judge who signed the citation or any judge of this court, provided the order of enlargement be made prior to the expiration of such time; such order to be filed with the clerk of this court.

5. Defendants in error, or appellees, are required, at the time of entering their appearance by attorney, to make a deposit of $20 for account of costs to be incurred by them in this court. In case of affirmance, or dismissal, when all costs shall have been paid by the plaintiff in error, or appellant, the said deposit shall be returned. This is allowable in all cases except when the United States is defendant in error or appellee.

In the **Fifth circuit** the following is added to the above:

4. In all cases the plaintiff in error or appellant, on docketing a case and filing the record, shall enter into an undertaking to the clerk, with surety to his satisfaction for the payment of his fees, or otherwise satisfy him in that behalf.

In the **Sixth circuit** the following is added to § 1: "And at the time of filing the record the appellant shall deposit with the clerk the sum of thirty-five dollars as security for costs, except in cases in which the proper showing is made and an order of this court is entered thereon allowing the cause to proceed in *forma pauperis*, and except in the cases where, by statute, advance payment of costs is not required."

And the following sections are added:

5. All subsequent papers filed, orders made and proceeding had, shall be noted upon the docket.

6. Whenever counsel for appellant and appellee shall, in vacation, sign and file with the clerk an agreement in writing directing the case to be dismissed and specifying the terms as to costs, on which terms it is to be dismissed, and shall pay to the clerk any fees due, he shall enter the case on his docket as dismissed and give to either party requesting it a copy of the agreement filed; but no mandate or other process on such dismissal shall be issued without the order of the court.

In the **Ninth circuit**, § 3 is as follows:

3. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall, if said counsel be qualified under the provisions of rule 7, be entered.

RULE 17.

DOCKET AND CALENDARS.

First circuit.—1. The clerk shall enter and number on the docket all cases consecutively, in their proper chronological order.

2. He shall print at least twenty days before the first Tuesday of October and of January, and the second Tuesday of April, a calendar of all the pending cases, arranged by districts in the following order: Maine, New Hampshire, Rhode Island, Massachusetts.

DOCKET.

Second circuit.—The clerk shall enter upon a docket all cases brought to and pending in the court in their proper chronological order, and such docket shall be called at every term, or adjourned term; and if a case is called for hearing at two terms successively, and upon the call at the second term neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

In the **Third circuit** this rule is rule 18, and is as follows:

DOCKET AND ARGUMENT LISTS.

1. Upon the filing of the record in any case by the plaintiff in error or appellant and the payment by him of a deposit fee of twenty-five dollars, the clerk shall enter the case, the record of which is so filed, upon the docket of this court; such docket shall have all its cases arranged in their proper chronological order.

2. The clerk shall prepare and cause to be printed, previous to the opening of each term of this court, an argument list of all cases the records of which shall have been filed with him not less than fifteen days before the opening of the term, which cases shall be put on the argument list in the chronological order of docketing the same, subject, however, to the following system of grouping: The first group shall be composed of the cases in which

all the circuit judges shall be competent to sit; the second, of the cases in which all the circuit judges except the youngest in commission shall be competent to sit; the third, of the cases in which all the circuit judges except the next to the youngest in commission shall be competent to sit, and the fourth, of the cases in which all the circuit judges except the oldest judge in commission shall be competent to sit.

DOCKET.

Fourth circuit.—1. The clerk shall enter upon a docket all cases brought to and pending in the court in their proper chronological order.

2. All cases in which copies of the printed record are delivered to the adverse party or his counsel at least twenty days before any regular term or adjourned term shall stand for argument at the term holden next after the docketing of the case.

3. The clerk before each regular term shall print a docket containing all pending cases and such docket shall be called at every term or adjourned term. If a case is called for hearing at two terms successively, and upon the call at the second term neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error, appellant or petitioner for revision, unless sufficient cause is shown for further postponement.

4. By consent of counsel in writing filed with the clerk of this court, any cases not included in section 2 of this rule may be by the clerk placed at the foot of the argument docket and may be argued at any term or adjourned term, provided the briefs on both sides are filed before the case is called.

Fifth circuit: same as in second circuit.

In the **Sixth circuit** this rule is section 1 of rule 18, as follows:

1. The clerk shall enter upon the docket in their proper chronological order all cases brought to or in this court.

And rule 17 is as follows in that circuit:

PROCEEDINGS IN FORMA PAUPERIS.

1. Applications for leave to proceed in this court pursuant to the act of July 20th, 1892, as amended July 25th, 1910, must be by special motion with notice under rule 24. If made before return is filed in this court, notice shall be served upon the adverse counsel in the district court. The showing by affidavit must be sufficient to satisfy this court that the appellant is entitled to the benefit of the act.

2. If appellant was plaintiff or complainant below, he must, with his application to this court, make it appear whether or not any other person—attorney, counsel, or otherwise—is beneficially interested in the recovery sought, and, if so, that every such person is, because of his poverty, unable to pay, or give security for, the costs from which appellants seek to be excused.

DOCKET.

Seventh circuit.—The clerk shall prepare calendars of causes for the regu-

lar terms of this court, to be held on the first Tuesday of October in each year, and for each adjourned session; placing thereon in proper chronological order only cases in which the record having been printed, briefs upon both sides have been filed seven days before the beginning of the term or session.

DOCKET.

Eighth circuit.—The clerk shall enter upon a docket all cases brought to and pending in the court in their proper chronological order, and such docket shall be called at every term, or adjourned term, except cases from the districts of Colorado, Utah, Wyoming and New Mexico, which cases shall only be called at the September term unless counsel otherwise stipulate as provided in rule 3; and if a case is called for hearing at two terms successively, and upon the call at the second term neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

DOCKET.

Ninth circuit.—The clerk shall, upon payment to him by the appellant or plaintiff in error of a deposit of twenty-five dollars in each case, file the record and enter upon a docket all cases brought to and pending in the court in their proper chronological order.

RULE 18.

CERTIORARI.

No certiorari for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for such certiorari must be made at the first term of the entry of the case; otherwise, the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

There is no rule in the **Sixth circuit** relating to certiorari.

RULE 19.

DEATH OF A PARTY.

1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and, if such representatives shall not voluntarily become parties, then the other party may suggest the death

on the record, and thereupon, on motion, obtain an order that, unless such representatives shall become parties within sixty days, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dismissed, and, if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and, on hearing, have the judgment or decree reversed, if it be erroneous: *Provided, however*, That a copy of every such order shall be personally served on said representatives at least thirty days before the expiration of such sixty days.

2. When the death of a party is suggested, and the representatives of the deceased do not appear within ten days after the expiration of such sixty days, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

3. When either party to a suit in a district court of the United States shall desire to prosecute a writ of error or appeal to this court from any final judgment or decree rendered in the circuit or district court, and at the time of suing out such writ of error or appeal, the other party to the suit shall be dead and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit cannot be revived in that court, but shall have a proper representative in some state or territory of the United States, or in the District of Columbia, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the filing of the record in this court the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered such judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some state or territory of the United States, or in the District of Columbia, and stating therein the name and character of such representative, and the state or territory or district in which such representative resides; and upon such suggestion he may on motion obtain an order that, unless such representative shall make himself a party within ninety days, the plaintiff in error or appellant shall be entitled to open the record, and on hearing have the judgment or decree reversed, if the same be erroneous: *Provided, however*, that a proper citation, reciting the substance of such order, shall be served upon such representative either personally or by being left at his residence, at least thirty days before the expiration of such ninety days: *Provided, also*, that in every such case, if the representative of the deceased party does not appear within ten days after the expiration of such ninety days and the measures above provided to compel the appearance of such representative have not been taken within the time as above required, by the opposite party, the case shall abate: And *provided, also*, that the said representative may at any time before or after said suggestion come in and be made a party to the suit and thereupon the suit shall proceed, and be heard and determined as in other cases.

In the **Third circuit** the above is rule 21, and rule 19 is as follows:

ARGUMENTS, CONTINUANCES, AND DISMISSALS.

1. The cases in the argument list shall be called for argument at each term, or adjourned term, and cases shall be argued on call unless the court shall for good cause otherwise order.

2. If the defendant in error or appellee fails to appear when his case is called for argument, the court may proceed to hear the argument on the part of the plaintiff in error or appellant and to give judgment according to the right of the case.

3. For good cause shown the court may order the continuance of any case for the term.

4. When a case is reached in the regular call, and there is no appearance for either party, it may be dismissed at the cost of the plaintiff in error or appellant.

5. Where no counsel appears for the plaintiff in error or appellant, and no brief has been filed for him, the defendant in error or appellee may have the writ of error or appeal dismissed at the cost of the defaulting party.

6. If a case is called for argument at two terms successively, and upon the call at the second term neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error or appellant unless a sufficient cause is shown for further postponement.

7. Whenever the plaintiff and defendant in a writ of error pending in the court, or the appellant and appellee in an appeal, shall, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed, as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

8. Cases may also be dismissed in accordance with the second section of rule 17, the first section of rule 23, and the fourth section of rule 24 of this court.

9. Except as in the preceding sections of this rule it is otherwise provided, no motion to dismiss a writ of error or an appeal will be heard unless previous notice of the motion has been given to the plaintiff in error or appellant or his counsel.

In the Sixth circuit this is rule 16, and rule 19 is as follows:

PRINTING RECORDS.

1. In cases where the record is printed by the appellant under act of February 13, 1911, he shall file with the clerk twenty-five printed copies thereof within the time as limited or extended for making return to writ of error or appeal. The clerk shall examine the printed records so offered to ascertain whether the transcript complies with rule 15, and also, whether the printed records comply with the statute and are properly indexed. If, in his judgment, they are insufficient in any particular, he shall bring the matter to the attention of the court, which will thereupon make such order as to it may

seem proper for corrected or supplementary return and printed records. As soon as the printed records are approved as filed or perfected as ordered, the clerk shall deliver one copy to each counsel or group of counsel representing a separate interest, and shall continue such distribution as counsel subsequently appear.

2. The clerk shall, from time to time and as directed by the senior circuit judge, receive proposals for printing such records as are to be printed by the clerk, which proposals shall be submitted to such judge, who will, in his discretion, award such printing to the most satisfactory bidder; and the same shall be done, during the period of such award, by the person to whom it is made.

3. In cases where appellant is not proceeding under such statute, the clerk shall at once, upon the docketing of the case, cause an estimate to be made of the cost of printing the record, including his supervising fee as provided in the table of costs following rule 27, and notify counsel for appellant of the estimated amount, which shall be paid to the clerk within ten days after such notice. If not so paid, the case may be dismissed upon motion or by the court upon its own motion. Supplemental estimates and payments thereof shall be made, if necessary; any excess payment shall be refunded, when the printing is finished. When the record was printed upon a former review of the same case, and enough old records to be reasonably sufficient for use upon the hearing are on file or available, the use of such old records, in lieu of printing, will be permitted, upon the order of the presiding judge, and to the extent specified in such order.

4. At once, upon the payment of such estimate, the clerk shall cause twenty-five copies of the record to be printed forthwith, shall file the same and shall distribute three copies of the same to counsel for each separate adverse interest then or thereafter appearing. Before printing, he shall examine the transcript to ascertain whether it complies with rule 15, and if, in his judgment, it omits anything required by that rule, he shall submit the matter to the court, which will make such order as to it may seem proper regarding a corrected or supplementary return; and the printing shall be delayed until the filing of any further return so ordered. In printing, the clerk shall omit any matters contained in the transcript which, by rule 15, are required to be omitted. If the appellant shall in writing and before the record is printed, request the clerk so to do, he shall print fifty copies instead of twenty-five. If the appellee shall request such additional copies to be printed, the clerk shall comply with such request, if the appellee, upon demand, advances to him the estimated cost of printing the additional twenty-five copies. If, later, a review in the Supreme Court is sought, the clerk shall deliver such twenty-five copies to the party seeking a review; but if such additional records are wanted by the party who did not pay for the printing thereof, the clerk shall require payment to him of the actual cost of such additional printing and shall refund the same to the party who had paid therefor.

5. Where the record is printed by the appellant, he shall file therewith proof by affidavit of the actual cost of such printing, including the amount paid to the clerk in the district court for the transcript. The amounts paid to the clerk of the district court for the manuscript transcript and to the clerk of this court for printing and for his fees in connection therewith, or

the amounts so shown to have been paid below by appellant (not exceeding, for printing, the amount which printing and supervision by the clerk of this court would have cost) shall form a part of the costs of the cause in this court and shall be taxed against the party against whom the costs are given and shall be inserted in the mandate or other proper process.

RULE 20.

DISMISSING CASES.

Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and appellee in an appeal, shall, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed, as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

In the **Fourth circuit** the following is added to the above: "No attorney's docket fee shall be taxed in a case dismissed under this rule."

In the **Eighth circuit** this rule is as follows:

Whenever the plaintiff and defendant in a writ of error pending in this court or the appellant and appellee in an appeal, shall, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed, as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk seasonably to present such agreement to the court for its consideration and determination.

In the **Sixth circuit, rule 20 is as follows:**

BRIEFS.

1. Counsel for appellant, within twenty-five days after the filing of the printed copies of the record, shall file with the clerk twenty printed copies of a brief.

2. This brief shall contain, in order here stated:

(1) A concise abstract or statement of the case, presenting succinctly the questions involved, and the manner in which they are raised;

(2) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record, and the authorities relied upon in support of each point. When a statute of a state is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. Within thirty days after service of appellant's brief, counsel for appellee shall file with the clerk twenty printed copies of his brief, which shall be of like character to that required of appellant, except that no statement of the case shall be required.

4. Subsequent briefs may be filed by either party; by the appellant, not less than twenty days, and by the appellee, not less than ten days, before the case is put on the call for argument. Later briefs will not be received by the clerk or by the court, without permission of the court or one of the judges thereof.

5. Every brief of more than twenty pages shall contain on its front fly leaves, a subject index with page references, the subject index to be supplemented by a list of all cases referred to alphabetically arranged together with references to the pages of the brief where the cases are cited.

6. At or before the time of filing any brief, two copies thereof shall be served upon each adverse counsel who has appeared in this court, and if there has been no appearance here for appellee, then upon his counsel in the court below; and the clerk shall require proof or acknowledgment of such services to be filed with the brief.

7. When an appellant is in default under clause 1 of this rule, the case may be dismissed on motion, or further time may be granted; when an appellee is in default under clause 3 of this rule, the appellant may bring such default to the attention of the court by a motion for a summary judgment of reversement, and thereupon the court will entertain such motion, or grant further time, as may seem proper; at the hearing a party who has not filed a brief, as required by this rule, will not be heard orally, unless the court shall so request.

RULE 21.

MOTIONS.

1. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

2. One hour on each side shall be allowed to the argument of a motion, and no more, without special leave of the court, granted before the argument begins.

3. No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

In the First circuit the following sections are added to the above, and the time for argument is changed to one half hour:

1. The motion day shall be the first Tuesday of every stated session of the court, and any other Tuesday while the court shall remain in session.

3. All motions to dismiss writs of error or appeals (except motions to docket and dismiss under rule 16) or to advance cases, or for a writ of certiorari, and other special motions, shall be printed, and be accompanied by printed briefs.

5. Any motion, of which counsel shall have given notice to the clerk in advance, shall be entered on the clerk's list in the order in which he receives notice thereof, and shall have priority in that order before other motions, unless otherwise specially ordered by the court.

In the Sixth circuit, rule 21 is as follows:

FORM OF PLEADINGS, RECORDS AND BRIEFS.

1. Records printed by the clerk shall be of a uniform size, printed in small pica type, 24 pica ems to a line, 48 lines to a page, solid, with index and suitable cover, containing the title of the court and cause, the court from which the case is brought to this court and the number of the case; size of pages to be 9½ x 6½ inches, except that in patent cases the size of the page will be 10¾ x 7⅝ inches,—that is to say, large enough to bind in copies of patent office drawings and specifications without folding.

The type shall be of a clear, strong face, substantially equivalent to that in which this rule (in the official copy) is printed and the paper shall be wholly unglazed. Each page shall carry as a running head in addition to the 48 lines, the name of the paper or of the witness testifying, as found on that page. Each pleading, order, exhibit or other paper shall be separated from the preceding matter by a 2-inch space and shall be headed by its title, in black-faced capitals, and its filing date (*e. g.*, "Answer—Filed February 15th, 1913"). The full title of the court and cause below shall be given on the title page; elsewhere, both shall be omitted.

2. Printed arguments and briefs of attorneys shall conform as far as practicable to the size and style of the printed record but shall contain about 36 lines to the page and be leaded with at least two-point leads.

In the **Seventh circuit** the time of argument is changed to one half hour.

In the **Ninth circuit** § 1 is as follows, and the time of argument is changed to one half hour:

1. All motions to the court shall be reduced to writing, shall contain a brief statement of the facts and objects of the motion and shall be served upon opposing counsel at least five days before the day noticed for the hearing.

RULE 22.

PARTIES NOT READY.

1. When a case is called for hearing, and no counsel appears and no brief has been filed for the plaintiff in error or appellant, the defendant in error or appellee may have the adverse party called and the writ of error or appeal dismissed.

2. Where the defendant in error or appellee fails to appear when the case is called for hearing, the court may proceed to hear argument on the part of the plaintiff in error or appellant, and to give judgment according to the right of the case.

3. When a case is reached in the regular call of the docket, and no counsel appears for either party, and no submission of the case is asked, the case may be dismissed at the cost of the plaintiff in error or appellant.

In the **First circuit** the following sections are added to the above:

1. On the first Tuesday of October and of January, and on the second Tuesday of April, the court, except as may, from time to time, be otherwise ordered, will commence calling cases for argument in the order in

which they stand on the calendar, and proceed from day to day during the session in the same order; but no case from the district of Massachusetts shall be called before the second Tuesday of the session.

5. If either of the parties is ready when the case is called, the same may be heard; and, if neither party is ready, the case may be dismissed, or be postponed to the next session, as the court may order.

6. If a case is called for hearing at two stated sessions successively, and, on the call at the second session, neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

In the Sixth circuit this rule is as follows:

THE HEARING CALENDAR.

1. Upon the expiration of the time limited for filing briefs, the case shall stand for hearing when reached.

2. A calendar, containing all cases docketed and not heard, shall be printed by the clerk for the October, January and April sessions. The cases on the calendar which stand for hearing under clause 1 will be called for argument in their order (as far as practicable) on the calendar, except as special advancements may have been made.

3. By leave of court and on motion of either party (1) cases entitled by statute to precedence, (2) criminal cases, (3) appeals, writs of error or petitions to revise in bankruptcy matters, and (4) cases which are for the second time in this court,—may be advanced and set for a designated session. The court may also, on its own motion or for good cause shown on motion of either party, advance any case to be heard at any session, though the time permitted under the rules for filing briefs may not have expired at the day set for hearing.

4. Not more than three cases will be heard on one day (counting, however, as one case, two or more which are heard together). The call for the next day shall, at the adjournment of court, be exhibited in the clerk's office. Counsel choosing to rely on the judgment of the clerk as to the probable time of hearing any case must do so at their own risk.

5. When the case is called, if either party is ready, the case will be heard. If there is no appearance for either party, the case will be dismissed. If the appellant does not appear by counsel or by printed brief but the appellee does appear, the case will be dismissed. If the appellant appears and the appellee does not, the court will hear the appellant.

6. By agreement of counsel in open court or by stipulation filed in the clerk's office, hearing may be continued once to any later session during the term or from the last session of one term to the first session of the next term, but not to a later day during the same session. Subsequent continuances can be made only by the court and will be only for reasons satisfactory to the court; and engagement of counsel in other courts will not be considered good cause.

7. Two or more cases, involving the same question, may, by order of the court, be heard together, but they must be argued as one cause.

RULE 23.

PRINTING RECORDS.

1. In all cases, the plaintiff in error or appellant, on docketing a case and filing the record, shall enter into an undertaking to the clerk, with surety to his satisfaction, for the payment of his fees, or otherwise satisfy him in that behalf.

2. The clerk shall cause an estimate to be made of the cost of printing the record, and of his fee for preparing it for the printer, and shall notify to the party docketing the case the amount of the estimate. If he shall not pay it within a reasonable time, the clerk shall notify the adverse party, and he may pay it. If neither party shall pay it, and for want of such payment the record shall not have been printed, when the case is reached at the regular call of the docket, the case may be dismissed.

3. Upon payment by either party of the amount estimated by the clerk, twenty-five copies of the record shall be printed under the clerk's supervision, for the use of the court and of counsel.

4. The clerk shall take to the printer the original transcript, on file; but shall cause copies to be made for the printer of such original papers sent up under rule 14, or other original papers, as are necessary to be printed.

5. The clerk shall supervise the printing, and see that the printed copies are properly indexed; and he shall distribute printed copies to the judges and the reporter, from time to time, as required, and three copies to the counsel for each party. An additional number of copies may be printed at the request of either party for his own use and at his own expense, or by order of the court.

6. The parties may stipulate in writing that parts only of the record shall be printed, and the case may be heard on the parts so printed; but the court may direct the printing of other parts of the record.

7. The clerk may receive from either party, and use as parts of the printed record, so far as the same may be of proper and convenient size and type, any portions which have been printed in any other court, and also printed copies of patents and other exhibits, allowing the party furnishing the same such sum therefor as the clerk deems reasonable, to be added to and form a part of the cost of printing.

8. If the actual cost of printing the record, together with the fee of the clerk, shall be less than the amount estimated and paid, the amount of the difference shall be refunded by the clerk to the party paying it. If the actual cost and clerk's fee shall exceed the estimate, the excess shall be paid to the clerk before the delivery of a printed copy to either party or his counsel.

9. In case of reversal, affirmance, or dismissal, with costs, the costs of printing the record and the clerk's fee shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other proper process.

Second circuit.—On the filing of the transcript in every case, the clerk shall forthwith cause fifteen copies of the same to be printed, and shall

furnish three copies thereof to each party, at least thirty days before the argument, and shall file nine copies thereof in his office. The parties may stipulate in writing that parts only of the record shall be printed, and the case may be heard on the parts so printed; but the court may direct the printing of other parts of the record. The clerk shall be entitled to demand of the appellant, or plaintiff in error, the cost of printing the record, before ordering the same to be done. If the record shall not have been printed when the case is reached for argument, for failure of a party to advance the costs of printing, the case may be dismissed. In case of reversal, affirmance, or dismissal, with costs, the amount paid for printing the record shall be taxed against the party against whom costs are given.

PRINTING AND DISTRIBUTING RECORDS.

Third circuit.—1. It shall be the duty of the clerk, immediately after the record of any case shall have been filed with him and docketed and the deposit fee of twenty-five dollars shall have been paid, to notify counsel for all parties that he will print only the parts of the record mentioned in the second section of this rule, specifying what those parts shall be, and to notify the counsel for plaintiff in error or appellant of his estimate of the cost of printing such parts of the record and of his fee for preparing the parts for the printer, indexing the same and supervising the printing thereof. He shall print no other parts of the record unless, within ten days after such notice, he receives from some one or more of the counsel a written certificate that in his or their judgment other specified parts thereof should be printed in order to enable this court properly to decide the questions raised, in which event the parts so certified as necessary shall also be printed. The court may, in its discretion, direct the printing of other parts of the record, and, in lieu of printing patents or other exhibits, separate printed copies thereof, not less than ten in number, may be filed with the clerk. If other parts of the record than those specified in his notice shall be required to be printed by any of the counsel, or by this court, the clerk shall immediately notify the counsel for the plaintiff in error or appellant of his estimate of the additional cost of preparing, printing and indexing such other parts. The plaintiff in error or appellant shall pay to the clerk, within ten days after notice of any estimate, the amount thereof, in default of which the writ of error or appeal may be dismissed upon the motion of the opposite party, or by the court of its own motion.

2. Unless additional parts of the record shall be required to be printed under the provisions of the first section of this rule, the clerk shall print, for the use of the court, only the following parts thereof:

In writs of error—

(*a*) The docket entries.

(*b*) The pleadings upon which the case was tried.

(*c*) The bill of exceptions.

(*d*) The motion and reasons for judgment *non obstante veredicto*, if any.

(*e*) The opinion of the court below, if any.

(*f*) The charge to the jury, if any.

(*g*) The verdict of the jury, if any.

(*h*) The judgment entered.

(*i*) The assignments of error.

In appeal—

(*a*) The docketing entries.

(*b*) The pleadings on which the case was held and determined.

(*c*) The evidence, if any, on which it was heard and determined.

(*d*) A report of the examiner, master, auditor, referee, or other officer who first decided the case, if any.

(*e*) The exceptions to that report, if any.

(*f*) The opinion of the court, if any.

(*g*) The judgment or decree entered.

(*h*) The assignments of error.

In bankruptcy and other cases not being strictly within either of the above classes, the printed record shall conform as nearly as may be practicable to the record in appeals.

3. The clerk shall cause twenty-five copies of the record to be printed, and three copies thereof to be furnished to the counsel of the plaintiff in error or appellant, and also three copies to each of the counsel, who shall have entered appearance for any of the other parties, and the remaining copies to be filed in his office, all if possible, within thirty days after the payment to him of the amount of his estimate made under the provisions of the first section of this rule.

4. The clerk shall supervise the printing of the record, have it properly indexed and distribute printed copies thereof to the judges of the court from time to time as required.

5. If the actual cost of printing the record and the clerk's fee of twenty-five cents per page for preparing the record for the printer, indexing the same, supervising the printing and distributing the copies, shall be less than the amount estimated and paid, the clerk shall refund the difference to the party paying the same, but if that shall exceed the clerk's estimate, the amount of such excess shall be paid to the clerk before he shall file the printed copies of the record or deliver any of them to the parties.

6. In case of reversal, affirmance, or dismissal, with costs, the actual cost paid for printing the record by the party in whose favor costs are awarded, and the clerk's fee for supervising the printing, etc., where such fee is paid by the parties in whose favor costs are awarded, shall be taxed against the party against whom costs are given and shall be inserted in the body of the mandate or other proper process.

7. Each printed copy shall show by a note or memorandum, the time when such pleading or document was filed, and shall contain at the top of its pages the running titles of its contents.

8. In any case where the record, or any part thereof, has been printed in the court below, the same may be embodied in and used as the printed record of this court; provided, the manner and style of printing shall correspond to the requirements of the several sections of this rule for printing them under the supervision of the clerk of this court; but the plaintiff in error or appellant shall pay to the clerk of this court not only the deposit fee of twenty-five dollars on filing the record and having it docketed, but also the fee prescribed by rule 29 for preparing the record for the

printer, indexing the same, supervising the printing and distributing the copies thereof.

9. The clerk shall on or before the conclusion of each case, collect and file for preservation in this court three copies of the printed record and of each brief, printed motion and argument submitted in such case, which is immediately after the mandate in any case shall have been set down to the lower court, notifying the defeated party in this court that unless he removes the remaining copies of the record and brief within ten days after notice so to do, the same will be destroyed.

PRINTING RECORDS BY CONSENT.

Fourth circuit.—This rule shall apply only to cases in which counsel for all parties to any cause pending in this court, or about to be brought into this court, shall by stipulation, in writing, filed with the clerk of the court below, agree to be governed by the terms hereof.

1. The transcript may be made and the record printed as has been heretofore the practice of this court, and the same shall, subject to the provisions §§ 3, 6, and 7 of rule 14, be made up by the clerk of the court below and transmitted to this court under his hand and seal as heretofore.

2. All records in such cases shall be printed under the supervision of the clerk of this court by such printer and at such rate as this court may designate. In such cases, upon the payment of the estimated cost of printing, together with the supervising and other fees established by law, (which amount shall be deposited with the clerk within ten days after notice thereof), the clerk shall cause to be printed thirty-five copies of the record, twenty-five copies of which shall be filed for the use of the court, three copies furnished to the adverse party, and the remaining copies to be delivered to the appellant, plaintiff in error or petitioner.

3. The parties may stipulate in writing that parts only of the transcript of the record shall be printed, and the case may be heard on the parts so printed, but the court may direct the printing of other parts of the record.

4. If the record shall not have been printed when the case is reached on the regular call of the docket, the case may be dismissed.

5. In case of reversal, affirmance, or dismissal, with costs, the amount paid for the printing of the record and the clerk's fees for supervising the same shall be taxed against the party against whom costs are given.

6. In cases brought here under this rule it shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court by or before the return day, whether in vacation or in term time but for good cause shown the justice or judge who signed the citation, or any judge of this court, may enlarge the time by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause designated and dismissed upon producing the certificate from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to

docket the case and file the record as the same shall have been docketed and dismissed under this rule unless by order of the court.

7. But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument at the term.

8. Upon the filing of the transcript of a record brought up by a writ of error or appeal, the appearance of the counsel for the party designating the case shall be entered as of course.

Fifth circuit.—1. The clerk shall, upon the docketing of a case, forthwith cause an estimate to be made of the cost of printing the record and of his fee for preparing it for the printer and supervising the printing; and shall notify the party docketing the case of the amount of the estimate. If he shall not pay it within fifteen days in ordinary cases, and within three days in preference cases, after the date of such notice, the clerk shall notify the adverse party, and he may pay it. If neither party shall pay it, and for want of such payment the records shall not have been printed when a case is reached for hearing, the case may be dismissed at the discretion of the court.

2. The clerk shall cause the record in all cases to be printed forthwith after the payment of such estimate, and shall immediately thereafter furnish to the counsel of each party whose appearance shall have been entered, three copies of the printed record, taking a receipt therefor, and the parties may, by written stipulation filed prior to the printing of the record, agree that only parts of the record shall be printed, and the same may be heard only on the parts so printed, but the court may direct the printing of other parts of the record.

3. The clerk shall take to the printer the original transcript on file, but shall cause copies to be made for the printer of such original papers sent up under rule 14, or other original papers, as are necessary to be printed.

4. The clerk shall cause at least twenty-five copies of the record to be printed, and may print a larger number on the request of either party on payment of the amount necessary for the printing of such extra copies.

5. The clerk shall supervise the printing and see that the printed record is properly indexed. There shall be omitted from the printed transcripts the following:

(1) Commissions to take testimony, and the formal captions to all depositions, and the certificates of commissioners as to the taking of the depositions, except in cases where objections have been made to the depositions on account of defects in caption or certificate.

(2) All process in the nature of subpœnas, citations, summons and subpœnas in chancery, unless from the assignment of errors it appears that some issue is raised which makes it necessary for the court to inspect such writs, and then only such as are involved.

In every transcript wherein any pleading, exhibit or other paper appears at more than one place, such pleading, exhibit or other paper shall be printed at the place it first appears in said transcript, and not there-

after; but the omission shall be indicated by apt notations and references to the pages of the printed record where it appears.

The clerk shall distribute the printed copies to the judges of the court and to the reporter from time to time, as required. If the cost of printing the record, together with the clerk's fee for supervising the same, shall be less than the amount estimated and paid, the difference shall be refunded by the clerk to the party paying the same. If the actual cost and the clerk's fee shall exceed the clerk's estimate, the amount of such excess shall be paid to the clerk before he shall deliver or file the printed record or any copies thereof.

6. In case of reversal, affirmance or dismissal with costs, the amount of the costs of the printing of the record and of the clerk's fee for supervising the same shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other proper process.

7. The clerk shall receive from either party, and use as parts of the printed record so far as the same may be of proper size and type, any portions which may have been printed in any other court, and also printed copies of patents and exhibits, allowing the party furnishing the same such sums therefor as the clerk deems reasonable, to be added to and form a part of the cost of printing.

In the **Sixth circuit,** rule 23 is as follows:

ORAL ARGUMENTS.

1. Cases will not be taken upon briefs without oral argument, except by permission of the court on special application made before the case is reached.

2. The appellant shall be entitled to open and to conclude. Cross appeals or cross writs of error shall be argued together as one case, and the plaintiff below shall be considered as appellant under this rule.

3. Two counsel, and no more (unless by special permission), may be heard for each party; but where no brief is filed and no counsel is heard for one party, only one counsel will be heard for the adverse party.

4. One hour and one half on each side will be allowed for argument, and no more, unless by leave of the court granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side at their discretion, provided that a fair opening of the case is made by the appellant.

Seventh circuit.—1. In all cases the plaintiff in error or appellant on docketing a case and filing the record shall enter into an undertaking to the clerk with surety to be approved by the clerk for the payment of all costs which shall be incurred in the cause, shall deposit with the clerk twenty-five dollars to be applied to the payment of costs and fees, and from time to time when necessary shall, on the demand of the clerk, make further deposits for that use.

2. The clerk, upon the docketing of a case, shall forthwith cause an estimate to be made of the cost of printing the record and of his fees for

preparing it for the printer and for supervising the printing thereof, and shall at once notify the attorney for the plaintiff in error, or appellant, of the amount of such estimate, which shall be paid to the clerk within ten days after such notice. If not so paid, the writ of error or appeal may be dismissed upon the motion of the opposite party, or by the court of its own motion.

3. The clerk shall cause the record in each case to be printed forthwith after the payment of such estimate, and shall immediately thereafter furnish to each of the respective parties at least three copies of the printed record, taking a receipt therefor. The parties may, by written stipulation filed with or prior to the filing of the record, agree that only parts of the record shall be printed, and the case will be heard on the parts so printed only, unless the court shall direct the printing of other parts.

4. The clerk shall cause at least twenty-five copies of the record to be printed and may print a larger number on the request of either party on the payment of the amount necessary for the printing of such extra copies.

5. The clerk shall supervise the printing and see that the printed record is indexed properly, and in a manner to indicate briefly the character of each document and exhibit referred to. He shall distribute the printed copies to the judges of the court from time to time as required. If the cost of printing the record, together with the clerk's fee for supervising the same, shall be less than the amount estimated and paid, the difference shall be refunded by the clerk to the party paying the same. If the actual cost and the clerk's fee shall exceed the estimate, the amount of the excess shall be paid to the clerk before he shall deliver or file the printed record or copies thereof.

6. In case of reversal, affirmance or dismissal with costs, the amount of the cost of the printing of the record and of the clerk's fee for supervising the same shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other process.

7. Upon the clerk's producing satisfactory evidence by affidavit, or by the acknowledgment of the parties or their sureties or attorneys, of having served a copy of the bill of fees due from them respectively in this court on such parties, their sureties or attorneys, an attachment shall issue against such parties or their sureties, respectively, to compel the payment of said fees.

8. The clerk shall adopt a uniform size for the printing of all records, shall have them printed in small pica type, on clear white paper, with a margin of not less than an inch and a half, shall show by note or memorandum on the margin the time when each pleading or document was filed, and at the top of the pages shall insert running titles of their contents.

9. The briefs of attorneys shall be printed and shall conform as nearly as practicable to the size of the printed record.

10. The clerk shall, on or before the conclusion of each case, collect and file or otherwise preserve together one copy of the printed record and of each brief, printed motion and argument submitted therein.

11. In any case where the record shall have been printed in the court below, in substantial conformity to these rules, presiding judge may, on

the application of the plaintiff in error or appellant order that such printed record be used in place of the printing hereinbefore provided for. But the clerk shall prepare and cause to be printed and attached to such record an index, and shall be paid the same fees for the indexing and supervising thereof as if printed under his supervision.

12. The clerk of this court shall obtain sealed proposal for the printing hereinbefore provided for, which proposal shall be submitted to the senior circuit judge of the court, who may award such printing to the lowest and best bidder, and all such printing shall be done by the person to whom the same is so awarded, except in emergencies when printing may be done by another at the same or less price. And when a case shall be heard upon the record printed below, the costs for printing shall be taxed on the basis of actual cost not exceeding the rate of the accepted bid.

13. The fees of the clerk of this court, as prescribed by order of the Supreme Court, made February 28, 1898, are as follows:

Docketing a case and filing the record	$5 00
Entering an appearance	25
Transferring a case to the printed calendar	1 00
Entering a continuance	25
Filing a motion, order, or other paper	25
Entering any rule, or making or copying any record or other paper, for each one hundred words	20
Entering a judgment or decree	1 00
Every search of the records of the court and certifying the same	1 00
Affixing a certificate and a seal to any paper	1 00
Receiving, keeping, and paying money, in pursuance of any statute or order of court, one per cent on the amount so received, kept, and paid	
Preparing the record for the printer, indexing the same, supervising the printing and distributing the copies, for each printed page of the record and index	25
Making a manuscript copy of the record, when required by the rules, for each one hundred words (but nothing in addition for supervising the printing)	20
Issuing a writ of error and accompanying papers, or a mandate or other process	5 00
Filing briefs, for each party appearing	5 00
Copy of an opinion of the court, certified under seal for each printed page (but not to exceed $5.00 in the whole for any copy)	1 00
Attorney's docket fee	20 00

Eighth circuit.—1. In cases brought to this court in which the plaintiff in error or appellant elects to waive the printing of the record under the provisions of the act of Congress, entitled "An Act to Diminish the Expense of Proceedings on Appeal and Writ of Error or of Certiorari," approved February 13, 1911, and file a typewritten or manuscript transcript of the record in this court, such plaintiff in error or appellant may within twenty days from and after the date of the filing and docketing of the

record in this court, serve on the adverse party a copy of a statement of the parts of the record which he thinks necessary for the consideration of the errors assigned, and file the same, with proof of service thereof, with the clerk of this court; the adverse party, within twenty days thereafter, may designate in writing and file with the clerk additional parts of the record which he thinks material, and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the plaintiff in error or appellant. If parts of the record shall be so designated by one or both of the parties, the clerk shall print those parts only; and the court will consider nothing but those parts of the record in determining the questions raised by the errors assigned. If at the hearing it shall appear that any material part of the record has not been printed, the writ of error or appeal may be dismissed, or such other order made as the circumstances may appear to the court to require. If the defendant in error or appellee shall have caused unnecessary parts of the record to be printed, such order as to costs may be made as the court shall think proper.

2. On the filing of the transcript in every such case the clerk shall cause thirty copies of the same, or the parts thereof designated under this rule, to be printed, and such additional number of copies as counsel for either of the parties may direct, and shall furnish three copies of the record so printed to each party at least sixty days before the argument.

3. In cases brought to this court in which the record has been printed and used upon the hearing in the court below, and which substantially conform to the printed records in this court, the plaintiff in error or appellant upon application to and by leave of this court, may furnish to the clerk twenty-five copies of such record, used on the hearing in the court below, to be used in the preparation of the printed record in this court; and the clerk's fee for preparing the record for the printer, indexing same, supervising the printing and distributing the copies, shall be computed as if said record so furnished had been printed under his supervision.

4. The clerk shall be entitled to demand of the plaintiff in error or appellant the cost of pleading the record before ordering the same to be done.

5. If the record shall not have been printed when the case is reached for argument, for failure of the party to advance the cost of printing, the case may be dismissed.

6. In case of reversal, affirmance, or dismissal, with costs, the amount paid for printing the record shall be taxed against the party against whom costs are given.

7. In any cause brought to this court, in which the record has been printed, in which a writ of certiorari shall be granted under the provisions of rule 18 of this court, the return to each writ of certiorari shall be printed in the same manner as the record was.

8. If in any cause in which the record or a portion thereof has been printed it shall be made to appear to this court that the printed transcript does not substantially conform to the requirements of the rules of this court, it may be rejected and stricken from the file and such order relative thereto may be entered as the court shall deem proper.

Ninth circuit.—1. All records shall be printed under the supervision of the clerk, and upon the docketing of the cause, he shall cause an estimate to be made of the expense of printing the record, and his fee for preparing it for the printer and supervising the printing, and shall notify the party docketing the case of the amount of the estimate. If the amount so estimated is not promptly paid over to the clerk, and for want of such payment the record shall not have been printed when a case is reached for argument, the case shall be dismissed.

2. Upon payment of the amount estimated by the clerk, thirty copies of the record shall be printed, under his supervision, for the use of the court and of counsel.

3. In cases of appellate jurisdiction the original transcript on file shall be taken by the clerk to the printer. But the clerk shall cause copies to be made for the printer of such original papers sent up under rule 14, § 4, as are necessary to be printed; and the whole of the record in cases of original jurisdiction.

4. In all cases, including cases in which the record may have been printed under the act of Congress, approved February 13, 1911, or otherwise, the clerk of this court shall index the printed record, and distribute the printed copies to the judges and the reporter, and one or more printed copies to the counsel for the respective parties.

5. If the expense of printing and supervision shall be less than the amount estimated and paid, the clerk shall refund the difference to the party paying same. If the expense is greater than the estimate the amount of such excess shall be paid to the clerk before he shall file the printed record or deliver copies to the parties or their counsel.

6. In case of reversal, affirmance or dismissal, with costs, the amount paid for printing the record and of the clerk's fee shall be taxed against the party against whom costs are given.

7. The plaintiff in error or appellant may, upon filing the record in this court, file with the clerk a statement of the errors on which he intends to rely, and of the parts of the record which he thinks necessary for the consideration thereof, and forthwith serve on the adverse party a copy of such statement. The adverse party, within ten days thereafter, may designate, in writing, filed with the clerk, additional parts of the record which he thinks material; and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the plaintiff in error or appellant. If parts of the record shall be so designated by one or both of the parties, or if such parts be distinctly designated by stipulation of counsel for the respective parties, the clerk shall print those parts only; and the court will consider nothing but those parts of the record, and the errors so stated. If at the hearing it shall appear that any material part of the record has not been printed, the writ of error or appeal may be dismissed, or such other order made as the circumstances may appear to the court to require. If the defendant in error or appellee shall have caused unnecessary parts of the record to be printed such order as to costs may be made as the court shall think proper.

All statements and stipulations filed hereunder shall distinctly and

accurately refer to the pages of the original certified record as well as the documents to be printed or omitted.

8. At the time of filing the record and docketing the cause, counsel for the plaintiff in error or appellant in patent cases may furnish the clerk with copies of patent office drawings and specifications to be used as inserts, and the same, if in proper form and of convenient size, shall be used in printing the record.

9. In all cases, including cases in which the record may have been printed under the act of Congress approved February 13, 1911, or otherwise, the fee of the clerk of this court for performing the services herein required shall be twenty-five cents for each printed page of the record and index, as provided by law.

RULE 24.

BRIEFS.

First circuit.—1. The counsel for the plaintiff in error or appellant shall file with the clerk of this court, at least six days before the case is called for argument, twenty copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain, in order here stated,—

(1) A concise abstract or statement of the case presenting succinctly the questions involved, in the manner in which they are reached.

(2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and, in cases brought up by appellant, specifications shall state as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be instructions given or in instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

(3) A brief of the argument exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a state is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

(4) A specification of the errors relied upon, which, in cases brought up by writ of error, set out separately and particularly each error asserted and intended to be urged.

3. The counsel for defendant in error or an appellee shall file with the clerk twenty printed copies of his brief at least three days before the case is called for hearing. His brief shall be of a like character to that required of the plaintiff in error or appellant, except that no specification of error

shall be required, and no statement of the case, unless that presented by the plaintiff thereof or appellant is controverted.

4. When there is no assignment of errors, as required by § 997 of the Revised Statutes, counsel will not be heard, except at the request of the court. And errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified. See rule 11.

5. When, according to this rule, the plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant is in error or an appellee is in default, he will not be heard, except on consent of his adversary, and by request of the court.

6. When no counsel appears for one of the parties and no brief or argument is filed only one counsel will be heard for the adverse party; but, if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsels.

In the **Second circuit,** §§ 1 and 3 are as follows, and the remainder is the same as in the first circuit:

1. Counsel for the plaintiff in error, or appellant, shall file with the clerk of this court at least twenty days before the case is called for argument, ten copies of a printed brief, one of which shall, on application, be furnished as of the counsel engaged upon the opposite side.

3. The counsel for a defendant in error, or an appellee, shall file with the clerk, at least ten days before the case is called for hearing, ten copies of his printed brief, one of which shall, on application, be furnished to each of the counsel on the opposite side. His brief shall be of a like character with that required of the plaintiff in error, or appellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error, or appellant, is controverted.

Third circuit.—1. In each case in which the printed record has been delivered by the clerk to the counsel for the plaintiff in error or appellant sixty or more days before the first day of the term, such counsel shall file twenty copies of his brief with the clerk not less than thirty days before the first day of such term; in each case in which the printed record has been delivered by the clerk to such counsel between thirty days and sixty days before the first day of such term, twenty copies of such brief shall be filed with the clerk not less than twenty days before the first day of such term; and in all other cases twenty copies of such brief shall be filed with the clerk not less than fifteen days after the receipt of such printed record. Within the same time such counsel shall give to counsel for the defendant in error or appellee not less than five copies of such brief.

2. This brief shall contain, in the order here stated—

(*a*) The names of the parties and the nature of the proceedings.

(*b*) A short abstract of the bill or declaration or petition, and of the plea or answer.

(*c*) A statement of the question or questions involved, which shall be in the briefest and most general terms, without names, dates, amounts or particulars of any kind whatever.

(*d*) A concise abstract or statement of the case.

(*e*) The assignments of error relied on, and, where any assignment of error is based on any bill of exceptions or any part of a bill of exceptions, a reference to the particular page of the record where the exception may be found.

(*f*) Argument on the part of the plaintiff in error or appellant, which shall exhibit a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a state is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. At least five days before the case is called for argument, the counsel for the defendant in error or appellee shall file with the clerk twenty printed copies of his brief, and give not less than five copies thereof to the counsel for the plaintiff in error or appellee. His brief shall be of a like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required, and no statement of the case unless that presented by the plaintiff in error or appellant is controverted.

Sections 4 and 5 are the same as sections 5 and 6 in the first circuit.

In the **Fourth circuit,** § 2, subds. (a) and (b), and § 3 are the same as in the first circuit. Sec. 4 is the same as § 5, and § 5 is the same as § 6 in that circuit, and the following sections are added:

1. The counsel for plaintiffs in error or appellant shall file with the clerk of this court, the last fifteen days before every term or adjourned term, twenty (20) copies of a printed brief, one of which shall forthwith be furnished by the clerk to each of the counsels of record engaged upon opposite side.

6. Counsel for either party may file with the clerk of this court twenty printed copies of a reply brief, provided the same are filed at least three days before the case is reached in its regular order on the argument docket.

The rule in the **Fifth circuit** is the same as in the first circuit, except that subdivision 4 of § 2 is omitted and § 1 is as follows:

1. The counsel for the plaintiff in error, appellant or petitioner, shall file with the clerk of this court, at least fifteen days in ordinary cases, and five days in preference cases, before the case is called for argument, twenty copies of the printed brief, one to be signed in handwriting by an attorney of this court, who has entered an appearance in the case; one copy of the brief shall, on application, be furnished to each of the counsel engaged upon the opposite side.

In the **Sixth circuit,** rule 24 is as follows:

MOTIONS AND HEARING THEREON.

1. Motion shall be filed with the clerk and shall contain a brief statement of the facts and of the objects of the motion, and be accompanied by such affidavits as are thought proper.

2. Counsel making the motion shall serve a copy thereof and of the accompanying papers and a notice of hearing upon the adverse counsel and also copy of any brief or any argument to be presented in support of the motion. Such notice may be for any day after four days from the service. The opposing party may, on or before the day named in the notice or within any extension of time made by the court or a judge thereof, file counter showing or brief; and the motion will then stand submitted, unless oral argument is directed. Except by stipulation, no motion will be considered without acknowledgment or proof of such notice.

3. Upon motion, there will be no oral argument, except leave of the court first obtained; and in such case, the court will fix the day for hearing and the time to be allowed for argument and the clerk will notify counsel.

In the **Seventh circuit**, § 2, subds. 1, 2 and 3, and §§ 5 and 6, are the same as in the first circuit, subd. 4 of § 2 is omitted, and the remainder is as follows:

1. The counsel for the plaintiff in error or appellant shall file with the clerk of this court, within twenty days after the date of the delivery by the clerk of the printed record, 20 copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

3. The counsel for the defendant in error or the appellee shall file with the clerk twenty printed copies of his brief within twenty days after the filing of the brief of the plaintiff in error or appellant. His brief shall conform to the requirements of this rule except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted. Either party, at or before the argument of the cause, may file a supplemental brief strictly confined to matter in reply to the brief of the opposite party.

4. When there is no assignment of errors, as required by § 997 of the Revised Statutes, counsel will not be heard, except at the request of the court, and errors not specified according to this rule, and rule 11, ante, will be disregarded; but the court at its option may notice a plain error involving the merits of the case, though not assigned or specified, and though the question be not saved according to the strict rules of practice, if it be apparent of record that the point was contested and not waived in the court below.

In the **Eighth circuit**, this rule is the same as in the first circuit, except that subd. 4 of § 2 is omitted and § 1, main statement of § 2 and § 3 are as follows:

1. Counsel for the plaintiff in error or appellant shall file with the clerk of this court, at least forty days before the case is called for argument, twenty copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall be printed on unglazed paper, and it and all quotations contained therein shall be in substantial conformity with the size and type prescribed by rule 26 for the printing of records and shall contain, in order here stated.

3. The counsel for a defendant in error or an appellee shall file with the

clerk twenty copies of his brief printed on unglazed paper and in substantial conformity with the size and type prescribed by rule 26 for the printing of records, at least ten days before the case is called for hearing. His brief shall be of a like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

In the **Ninth circuit** this rule is the same as in the first circuit, except that subd. 4 of § 2 is omitted, and § 1 is as follows:

1. The counsel for the plaintiff in error or appellant shall file with the clerk of this court twenty copies of a printed brief, and serve upon counsel for the defendant in error or the appellee one copy thereof, at least ten days before the case is called for argument.

RULE 25.

ORAL ARGUMENTS.

1. The plaintiff in error or appellant in this court shall be entitled to open and conclude the argument of the case. But where there are cross appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

2. One counsel will be heard for each party on the argument of a case.

3. Two hours on each side will be allowed for the argument and no more, without special leave of the court granted before the argument begins. The time thus allowed may be apportioned by the counsel on the same side at their discretion, provided, always, that a fair opening of the case shall be made by the party having the opening and closing arguments.

In the **Second circuit,** § 3 is as follows:

3. Upon writs of error, appeals in admiralty, appeals from orders granting a preliminary injunction pending appeals in customs cases, one hour on each side and in other cases one hour and a half will be allowed. But in all cases where there are no difficult questions of law and the amount involved does not exceed five hundred dollars, and in appeals and petitions for review in bankruptcy only one half hour on each side will be allowed. No more time than above specified will be allowed without leave of the court granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side at their discretion, provided always that a fair opening of the case shall be made by the party having the opening and closing arguments.

In the **Fifth circuit** § 3 is as follows:

3. One hour will be allowed for the plaintiff in error or appellant to open and present his case, and one hour will be allowed to the defendant in error or appellee to answer; thirty minutes will then be allowed to the plaintiff in error or appellant to reply. No more time will be allowed for argument without special leave of the court.

In the **Sixth circuit** this rule is as follows:

OPINIONS.

1. All opinions delivered by the court will immediately upon the delivery thereof, be handed to the clerk to be recorded.

2. The clerk shall cause to be printed any manuscript opinion filed with him. An opinion printed under the supervision of the clerk or a judge, need not be copied into a book of records; but at the hearing of each term the clerk shall cause such printed opinion to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded within the meaning of this rule.

In the **Seventh circuit** the following is added to the above:

4. Reading at length from briefs or reported cases shall not be indulged.

In the **Ninth circuit,** § 3 is as follows:

3. One hour on each side will be allowed for the argument, and no more, without special leave of the court, granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side at their discretion; provided, always, that a fair opening of the case shall be made by the party having the opening and closing arguments.

RULE 26.

FORM OF PRINTED RECORDS, ARGUMENTS AND BRIEFS.

First circuit.—All records, arguments, and briefs, printed for the use of the court, must be in such form and size that they can be conveniently bound together, so as to make an ordinary octavo volume.

Second circuit.—All arguments and briefs printed for the use of the court must be printed upon a page eleven inches long by seven inches wide and must have a margin of at least two inches in width.

OPINIONS OF THE COURT.

Third circuit.—1. All written opinions delivered by the court shall be filed by the clerk.

FORMS OF PRINTED RECORD, ARGUMENTS, AND BRIEFS.

Fourth circuit.—All transcripts of record, addenda thereto, arguments and briefs printed for the use of this court shall be in small pica type, 24 pica "ems" to a line, on unglazed paper, with an index, and a suitable cover containing the title of the court, the cause, and the court from which the case is brought into this court, and the number of the case. Size of pages to be 9¼ x 5¼ inches, except that in patent cases the size of the pages shall be 10¾ x 7⅝ inches; that is to say, large enough to bind in copies of Patent Office drawings and specifications without folding. So much of the record as was printed in the court below may be used in this court if it conforms to this rule.

Fifth circuit.—All arguments, briefs, motions and petitions for rehearing

printed for the use of the court must be printed on white book paper size of paper page, trimmed, to be 6¼x9¼ inches; size of type page to be 4x7 inches, exclusive of folio line; margin to be properly arranged with view of rebinding. Type must not be smaller than long primer.

INTEREST AND DAMAGES.

Sixth circuit.—1. Where a judgment or decree of the district court at law in equity, bankruptcy, or admiralty, requiring the payment of money, is affirmed by this court, interest thereon from its date and until payment shall be culminated and levied at the same rate borne by similar judgments or decrees in the courts of the state where such district court sits.

2. Where, in any such case the review in this court has delayed proceedings to collect the awarding in the district court, and shall appear to this court to have been had or prosecuted merely for delay, damages at a rate not exceeding ten per cent of the award, and in addition to interest may be imposed by this court.

OPINIONS OF THE COURT.

Seventh circuit.—1. All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the clerk to be recorded.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. Opinions printed under the supervision of the judge delivering the same need not be copied by the clerk into a book of records, but, at the end of each term, the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded within the meaning of this rule.

Eighth circuit.—1. All transcripts of record, arguments and briefs for the use of this court, except in patent causes as hereinafter provided, shall be printed on unglazed paper not less than 5¼ inches in width, x 9½ inches in length, including a sufficient margin so that they can be conveniently trimmed and bound in volumes. The paper should equal a weight of eighty pounds per ream on basis of size of sheet 25x38 inches.

2. All records and briefs in patent causes may be printed on unglazed paper, of the weight, as provided in § 1 of this rule, of such size that copies of letters patent may be inserted therein without folding; but the size of such records and briefs in patent causes shall not be less than 7½ inches wide and 9½ inches long, so that the records and briefs can be conveniently trimmed and bound in volumes.

3. All records, briefs, supplemental transcripts and returns to writs of certiorari shall be printed in clear 11-point or small pica type (never smaller than 10-point) of 26 pica or 28 small pica ems to a line, and 52 lines, including running head, solid, per printed page, containing substantially 1,400 small pica ems. Where testimony or deposition by question and answer are printed, the answer shall follow on the same line as question whenever the same can be done.

4. All indexes to records and tabular exhibits, which from their nature require smaller type may be printed in 8-point, or brevier type.

5. All covers for records shall be printed in a neat and workmanlike manner on substantial paper equal to a weight of 96 pounds per ream on the basis of a sheet 25x40 inches, and shall contain in conspicuous type the following matter, viz.:

First. TRANSCRIPT OF RECORD.

Second. UNITED STATES CIRCUIT COURT OF APPEALS EIGHTH CIRCUIT.

Third. The abbreviation for number "No." followed by a blank line ¾ of an inch in length.

Fourth. The title of the cause as it will be docketed in this court, *viz.:* ....., Appellant (or Plaintiff in Error) as the case may be, vs. ....., Appellee (or Defendant in Error).

Fifth. The words "In Error to" (or "Appeal from") as the nature of the case may require, followed by the correct title of the trial court.

6. Unless otherwise expressly directed by counsel, the full titles of the court and cause once correctly shown in the printed transcript shall not be repeated when unchanged. There shall be placed at the head of each subsequent pleading, etc., a brief designation of its character.

Unless otherwise expressly directed by counsel, the indorsements on pleadings, etc., shall not be printed in full; it shall be sufficient to print: "Filed in the ..... Court on .....," giving the correct date and name of the court.

The date of all orders and decrees and the name of the judge or judges making them shall always appear.

In printed transcripts the pleadings, orders, testimony of witnesses, etc., shall be separated by a face rule three inches long. The clerk shall indicate to the printer the appropriate places therefor.

When inserts are folded several times to conform to the size of the printed record, stubs should be inserted at the binding side of the record to equalize the space occupied by the folds. Unmounted photographs should be used when copies of such are required in printed records.

As this rule is intended primarily for the guidance of the printer his attention should be directed thereto before the record or brief is printed.

A sample copy of a printed record will be furnished by the clerk of this court on application therefor.

Records and briefs not printed in substantial conformity with the provisions of this rule will not be accepted or filed.

FORM OF PRINTED RECORDS, ARGUMENTS, BRIEFS, AND PETITIONS FOR REHEARING.

Ninth circuit.—1. All records printed for the use of the court must be printed on unruled white writing paper, 9¼ inches long and 6¼ inches wide. The printed page, exclusive of any marginal note, reference or running head, must

be 7 inches long and 4 inches wide, excepting in patent cases where counsel furnish to the clerk at the time of docketing the cause patent office drawings and specifications for insertion. In such cases the margin of the record may be sufficiently enlarged to accommodate such drawings and specifications. The record must be properly indexed. Pica double-leaded is the only mode of composition allowed.

2. All argument, briefs and petitions for rehearing, printed for the use of the court, must be printed on unruled white writing paper, 9¼ inches long and 6¼ inches wide. The printed page, exclusive of any marginal note, reference or running head, must be 7 inches long and 4 inches wide. Pica double leaded is the only mode of composition allowed.

RULE 27.

COPIES OF RECORDS AND BRIEFS.

The clerk shall carefully preserve in his office one copy of a printed record in every case submitted to the court for its consideration and of all printed motions, briefs, and arguments filed therein.

In the **Third circuit** this rule is as follows:

REHEARING.

1. A petition for rehearing a cause may be filed with the clerk at any time within thirty days after the entry therein of the final judgment or final decree of this court, and, if the term within which such judgment or decree shall have been entered shall expire during said period of thirty days, the judgment or decree, and the record on which the same shall have been entered, shall nevertheless remain subject to the control of this court until the full expiration of the time herein allowed for the filing of the petition; *Provided, however*, that no such petition shall be filed after this court, by any order made within said period of thirty days, shall have directed the immediate issue of a mandate or other process in the nature of a procedendo (see rule 30). The petition shall be printed, shall briefly and distinctly state the reasons for a rehearing, and shall be supported by the certificate of counsel.

Fourth circuit.—The clerk shall cause to be bound two copies of the printed record in every case, and of all printed motions, briefs and arguments filed therein; one copy to be carefully preserved in his office, and one copy for the use of the court library. The cost of the same to be paid for by the clerk out of the revenues of his office.

COSTS.

Sixth circuit.—1. Where any case shall be dismissed out of this court for lack of jurisdiction herein, only such costs as are incidental to hearing and determining the question of jurisdiction will be awarded; in all other cases (except when provided by statute or general rule) upon the final disposition of a proceeding in this court costs will be awarded to the party here prevail-

ing, unless the court, by a special direction, denies, otherwise awards or apportions the costs.

2. In cases to which the United States is a party, no costs in this court will be awarded.

3. In denying or apportioning costs under clause 1, the court will enforce, as far as possible, the duty of each party to confine within the limits prescribed by rules 10 and 15 the bill of exception, statement of evidence, and transcript.

4. The cost of stenographers' transcripts of testimony used in settling a bill of exceptions, or a statement of evidence, will not be taxed in this court, but shall be awarded and taxed by the court below as mandate, as this court may direct, or lacking such direction as to that court shall seem proper.

5. When costs are allowed it shall be the duty of the clerk to insert the amount thereof in the body of the mandate or other process sent to the court below, and annex to the same a bill of items taxed in detail.

6. The proper fees of the clerk therefor shall be paid before any transcript of the record in any case shall be transmitted to the Supreme Court.

TABLE OF COSTS.

Order promulgated by the Supreme Court of the United States February 28, 1898.

Ordered, In pursuance of the Act of Congress of February 19, 1897 (29 Stat. 536, c. 263), that the following table of fees and costs in the circuit courts of appeals be, and the same is hereby, established, to take effect on the first day of March, A. D. 1898, and no other fees and costs than those therein named shall thereafter be charged:

Docketing a case and filing the record	$ 5 00
Entering an appearance	25
Transferring a case to the printed calendar	1 00
Entering a continuance	25
Filing a motion, order or other paper	25
Entering any rule, or making or copying any record or other paper, for each one hundred words	20
Entering a judgment or decree	1 00
Every search of the records of the court and certifying the same	1 00
Affixing a certificate and a seal to any paper	1 00
Receiving, keeping and paying money in pursuance of any statute or order of court, one per cent. on the amount so received, kept and paid.	
Preparing the record for the printer, indexing the same, supervising the printing and distributing the copies, for each printed page of the record and index	25
Making a manuscript copy of the record, when required by the rules, for each one hundred words (but nothing in addition for supervising the printing)	20
Issuing a writ of error and accompanying papers, or a mandate or other process	5 00

Filing briefs, for each party appearing ..... $ 5 00
Copy of an opinion of the court, certified under seal, for each printed page (but not to exceed five dollars in the whole for any copy) 1 00
Attorneys' docket fee 20 00

REHEARING.

Seventh circuit.—A petition for rehearing must be filed within thirty days after entry of judgment or decree, or after filing of the opinion, shall be in print, and be served forthwith by copy upon the opposing party, who, within twenty days from such service, may file a printed answer, and the petition shall be determined without oral arguments, unless otherwise ordered. If a petition be not filed within the time allowed, and upon the overruling of a petition, the clerk shall, without special order, issue the mandate of the court to the court below. Twenty copies of such petition or answer shall be filed with the clerk of this court.

Eighth circuit.—The clerk shall cause to be bound in volumes in a substantial manner and shall carefully preserve in his office one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions, briefs, and arguments filed therein.

RULE 28.

OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the clerk to be recorded.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. Opinions printed under the supervision of the judge delivering the same need not be copied by the clerk into a book of records; but, at the end of each term, the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded within the meaning of this rule.

INTEREST.

Third circuit.—1. In cases where a writ of error is prosecuted in this court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied, from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the state where such judgment was rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent, in addition to interest, shall be awarded upon the amount of the judgment.

3. The same rule shall be applied to decrees for the payment of money in cases in equity, unless otherwise ordered by this court.

4. In cases in admiralty, damages and interest may be allowed, if specially directed by the court.

Fourth circuit.—1. All opinions delivered by the court shall be printed under the supervision of the judge delivering the same, or of one of the circuit judges, the cost of such printing to be paid by the clerk out of the revenues of his office and charged to the litigants in the respective cases, to be taxed and allowed as other costs.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. The clerk of this court shall from time to time cause two sets of the printed opinions of this court to be bound in a substantial manner into volumes, one set to be kept in the clerk's office and one set to be kept in the court library.

REHEARINGS.

Sixth circuit.—A petition for rehearing after judgment can be presented only within thirty days (at the same or succeeding term) after the day when the printed opinion of the court is filed, and can be obtained by counsel for the parties (which date the clerk will note upon the docket), unless by special leave granted during such thirty days by the court or a judge thereof, and must be printed, and briefly and distinctly state its grounds, and be supported by certificate of counsel, and will not be granted, or permitted to be argued, unless a judge who concurred in the judgment desires it and a majority of the court so determines.

INTEREST.

Seventh circuit.—1. When a judgment for the payment of money is affirmed by this court, the interest thereon shall be calculated and levied from the date of the judgment below until the same is paid, and at the same rate that similar judgments bear interest in the courts of the state where such judgment was rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent, in addition to interest, shall be awarded on the amount of the judgment.

3. The same rule shall be applied to decrees for the payment of money in cases in equity, unless otherwise ordered by this court.

4. In cases in admiralty, damages and interest may be allowed, if specially directed by the court.

5. In cases where money is paid into court, any party interested may move for an order that the clerk deposit the same under the direction of the court. On deposits so made, the clerk shall account for such interest as he may have collected on the fund. But without such order he shall not be required to account for interest.

Ninth circuit.—The original opinions of the court shall be filed with the

clerk of this court for preservation, and when so filed the same shall be deemed to have been recorded within the meaning of this rule.

RULE 29.

REHEARING.

First circuit.—A petition for a rehearing after judgment may be filed at the term at which the judgment is entered, and within one calendar month after such entry, and not later unless by leave granted during the term. It must be in print, in the form and style required by rule 26, and it must briefly and distinctly state its grounds, and be supported by a certificate of counsel. It will not be granted, or permitted to be argued, unless a judge who concurred in the judgment desires it and a majority of the court so determines. *Provided,* Whenever a judgment is entered within less than a month before the term adjourns, the petition may be filed within a month after the entry of judgment, and with the same effect after the term as though filed before the adjournment.

Second circuit.—A petition for rehearing after judgment can be presented only at the term at which judgment is entered, unless by special leave granted during the term; and must be printed and briefly and distinctly state its grounds, and be supported by certificate of counsel; and will not be granted, or permitted to be argued, unless a judge who concurred in the judgment desires it, and a majority of the court so determines.

COSTS.

Third circuit.—1. In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The cost of transcript of record from the court below shall be taxable in that court as costs in the case.

4. Neither of the foregoing sections shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

5. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other process sent to the court below and annexed to the same, the bill of items taxed in detail.

6. In all cases certified to the Supreme Court or removed thereto by certiorari or otherwise, the fees of the clerk of this court shall be paid before a transcript of the record shall be transmitted to the Supreme Court.

7. In pursuance of the act of Congress of February 19, 1897 (29 Stat. at L.

536, ch. 263), and of the order of the Supreme Court of January 10, 1898, as amended February 28, 1898 (90 Fed. Rep. clxxi), the following table of fees and costs is established for this court:

Docketing a case and filing the record	$5 00
Entering an appearance	25
Transferring a case to the printed calendar	1 00
Entering a continuance	25
Filing a motion, order, or other paper	25
Entering any rule, or making or copying any record or other paper, for each one hundred words	20
Entering a judgment or decree	1 00
Every search of the records of the court and certifying the same	1 00
Affixing a certificate and a seal to any paper	1 00
Receiving, keeping, and paying money, in pursuance of any statute or order of court, one per cent on the amount so received, kept and paid.	
Preparing the record for the printer, indexing the same, supervising the printing and distributing the copies, for each printed page of the record and index	25
Making a manuscript copy of the record, when required by the rules, for each one hundred words (but nothing in addition for supervising the printing)	20
Issuing a writ of error and accompanying papers, or a mandate or other process	5 00
Filing briefs, for each party appearing	5 00
Copy of an opinion of the court, certified under seal, for each printed page (but not to exceed five dollars in the whole for any copy)	1 00
Attorney's docket fee	20 00

Fourth circuit.—A petition for rehearing can be presented only within thirty days after judgment is entered, unless by special leave granted during the term the judgment was entered; and must be printed and briefly and distinctly state its grounds, and be supported by its certificate of counsel; and will not be granted, or permitted to be allowed, unless judge who concurred in the judgment desires it, and the majority of the court so determine. But such petition shall not operate to stay the mandate or other process provided for in rule 32, except by special order of the court.

Fifth circuit.—Same as in second, except that the petition must be filed within twenty days after entry of judgment.

MANDATE.

Sixth circuit.—In all cases finally determined in this court, a mandate, or other process in the nature of a procedendo, shall be issued to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

Such mandate shall not issue until time has elapsed for filing a petition to rehear, as defined by rule 28; and no mandate or other process of procedendo shall issue when a petition to rehear is pending, unless specially ordered.

Every mandate shall be accompanied by a copy of the opinion filed in the

cause in which it is issued, and the charge for the same shall be taxed in the costs of the case.

In cases not requiring special form of process, the mandate (unless otherwise directed by the court or a judge thereof) shall be issued by the clerk upon the expiration of time for filing rehearing petition, or upon the denial of such petition, and as well in vacation as in term time.

COSTS.

Seventh circuit.—1. When any suit shall be dismissed in this court, except for want of jurisdiction, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties.

2. In every case of a judgment or decree affirmed in this court costs shall be allowed to the defendant in error or appellee unless otherwise ordered by the court.

3. In every case of reversal of a judgment or decree in this court costs shall be allowed to the plaintiff in error or appellant unless otherwise ordered by the court. The costs of the transcript of the record from the court below shall be taxable in that court as costs in the case.

4. No costs shall be allowed in this court for or against the United States.

5. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, directing to award execution thereupon and to annex to the same the bill of items taxed in detail.

6. In all cases certified to the Supreme Court or removed thereto by certiorari or otherwise, the fees of the clerk of this court shall be paid before a transcript of the record shall be transmitted to the Supreme Court.

Eighth circuit.—1. A petition for rehearing may be presented and filed within sixty days after the date of the judgment or decree, and jurisdiction to hear and decide the question presented thereby is reserved, notwithstanding the representation of the term within the sixty days.

2. Such petition for hearing must be printed and twenty copies thereof filed with the clerk and must previously and distinctly state its grounds and be supported by a certificate of counsel, and will not be granted or be permitted to be allowed unless the judge who concurred in the judgment desires it, and a majority of the court so determines.

Ninth circuit.—A petition for rehearing may be presented within thirty days after judgment, must be printed, and briefly and distinctly state its grounds, and be supported by certificate of counsel that in his judgment it is well founded, and that it is not interposed for delay. Twenty printed copies must be filed with the clerk.

RULE 30.

INTEREST.

First circuit.—1. In cases where a writ of error is prosecuted in this court and the judgment of the inferior court is affirmed, the interest shall be calculated and levied, from the date of the judgment below until the same is paid,

at the same rate that similar judgments bear interest in the courts of the state where such judgment was rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent, in addition to interest, shall be awarded upon the amount of the judgment.

3. The same rule shall be applied to decrees for the payment of money in cases in equity, unless otherwise ordered by this court.

4. In cases in admiralty, damages and interest may be allowed, if specially directed by the court.

Third circuit.—1. In each case finally determined in this court, a mandate or other proper process in the nature of a procedendo shall be issued to the court below, for the purpose of informing such court of the proceedings in this court so that further proceedings may be had in such court as to law and justice may appertain. Such mandate or other process may issue at any time on the order of the court, and, when not otherwise ordered, it shall issue as of course at the expiration of thirty days from the date of entering the final judgment or final decree of this court.

The following is added to the above in the **Fourth circuit:**

5. In cases where money is paid into court, any party interested may move for an order that the clerk deposit the same under the direction of the court. On deposits so made, the clerk shall account for such interest as he may have collected on the fund. But without such order he shall not be required to account for interest.

PHYSICAL EXHIBITS.

Sixth circuit.—1. Physical exhibits, not returned with the record but which are to be used on the hearing, shall be placed in the custody of the marshal of this court at least ten days before the case is heard or submitted.

2. All such physical exhibits shall be taken away by the parties promptly after the mandate issues. When this is not done, it shall be the duty of the marshal to notify the counsel in the case, by mail or otherwise, of the requirements of this rule, and if the articles are not removed within reasonable time after the notice is given, he shall destroy them or make such other disposition of them as to him may seem best.

MANDATE.

Seventh circuit.—In all cases finally determined in this court, a mandate or other proper process in the nature of a procedendo shall be issued, on the order or by the rule of this court, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

RULE 31.

COSTS.

1. In all cases where any suit shall be dismissed in this court, except where

the dismissal shall be for want of jurisdiction, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court.

4. The cost of the transcript of the record from the court below shall be taxable in that court as costs in the case.

5. Neither of the foregoing sections shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

6. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

7. In all cases certified to the Supreme Court or removed thereto by certiorari or otherwise, the fees of the clerk of this court shall be paid before a transcript of the record shall be transmitted to the Supreme Court.

In the **Second circuit,** §§ 3 and 4 as given above are combined in § 3, and the following is added to that section: "And the clerk of the court below shall send to the clerk of this court with the transcript of record a certificate of the cost of such transcript."

CUSTODY OF PRISONERS ON HABEAS CORPUS.

Third circuit.—1. Pending an appeal from the decision of any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or judge, or be enlarged upon recognizance, as hereinafter provided.

3. Pending an appeal from a final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

In the **Fourth circuit,** § 4 is included in § 3, as follows, and the following section is added to the above: Part of § 3: "The cost of the transcript of the record and proofs from the court below, and the expense of printing the same, when printed below, shall be taxable in that court as costs in the case. The expense of printing, however, shall be taxed at actual cost (to be shown by the affidavit of the printer), but in no event to exceed twenty cents per folio of one hundred words."

Added section:

7. The following table of fees and costs, established under the act of Congress of February 19, 1897 (29 Stat. 536, c. 263), shall remain and continue in effect with the promulgation of these rules:

Docketing a case and filing the record	$ 5 00
Entering an appearance	25
Transferring a case to the printed calendar	1 00
Entering a continuance	25
Filing a motion, order or other paper	25
Entering any rule, or making or copying any record or other paper, for each one hundred words	20
Entering a judgment or decree	1 00
Every search of the records of the court and certifying the same	1 00
Affixing a certificate and a seal to any paper	1 00
Receiving, keeping and paying money, in pursuance of any statute or order of the court, one per cent on the amount so received, kept and paid.	
Preparing the record for the printer, indexing same, supervising the printing and distributing the copies, for each printed page of the record and index	25
Making a manuscript copy of the record, when required by the rules, for each one hundred words (but nothing in addition for supervising the printing)	20
Issuing a writ of error and accompanying papers, or a mandate or other process	5 00
Filing briefs, for each party appearing	5 00
Copy of an opinion of the court, certified under seal, for each printed page (but not to exceed five dollars in the whole for any copy)	1 00
Attorney's docket fee	20 00

In the **Fifth circuit**, § 4 is included in § 3.

LIBRARY.

Sixth circuit.—All fees collected by the clerk, which are not by law required to be deposited by him in the Treasury of the United States, shall constitute a fund to be expended by the clerk under the direction of the presiding judge, in the purchasing, repairing, and rebinding of law books for the library of the court; and it shall be his duty to render to the court, for its examination and approval, an annual account of such fees received by him and of his disbursements thereof.

CUSTODY OF PRISONERS ON HABEAS CORPUS.

Seventh circuit.—1. Pending an appeal from the final decision of any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in the custody of the court or judge, or be enlarged upon recognizance, as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge dis-

charging the prisoner, he shall be enlarged upon recognizance, with surety for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

In the **Eighth circuit**, § 4 is included in § 3 as follows: Where the record has been printed in this court under the provisions of §§ 1 and 2 of rule 23, the cost of printing thirty copies of the transcript of record from the court below shall be taxed as costs in the case, unless otherwise ordered by this court, but no allowance shall be made for the amount paid to the clerk of the court below for the written or typewritten transcript of the record. Where the record has been printed in the court below and a copy of such printed record certified to this court the cost of printing twenty-five copies of such record or portion thereof shall be taxable as costs in the case in the court below, unless otherwise ordered by this court.

In the **Ninth circuit** § 4 is included in § 3, and the following section is added to the above:

7. Upon the clerk's producing satisfactory evidence, by affidavit or the acknowledgment of the parties or their sureties, of having served a copy of any bill of fees due by them, respectively, in this court, on such parties or their sureties, an attachment shall issue against such parties or sureties respectively to compel payment of said fees.

RULE 32.

MANDATE.

In every case finally determined, a mandate, or other proper process in the nature of a procedendo, shall be issued to the court below, for the purpose of informing that court of the proceedings in this court, so that further proceedings may be had in the court below as to law and justice may appertain. Such mandate, or other process, may issue at any time on the order of the court; but, unless otherwise ordered, it shall issue as of course after two calendar months from the entry of judgment, unless a petition for rehearing has been filed and remains undisposed of.

The part beginning, "such mandate," is omitted in the **Second circuit.**

MODELS, DIAGRAMS AND EXHIBITS OF MATERIAL.

Third circuit.—1. Models, diagrams and exhibits of material forming part of the evidence taken in the court below, in any case pending in this court, on writ of error or appeal, shall be placed in the custody of the clerk of this court at least ten days before the case is heard or submitted.

2. All models, diagrams and exhibits of material placed in the custody of the clerk for the inspection of the court on the hearing of a case, must be taken away by the parties within one month after the case is decided. When this is not done, it shall be the duty of the clerk to notify the counsel in the case, by mail or otherwise, of the requirements of this rule, and, if the articles are not removed within a reasonable time after the notice is given, he shall

destroy them, or make such other disposition of them as to him may seem best.

This concludes the rules in the third circuit.

In the **Fourth circuit** the words, "two calendar months," are changed to "thirty days."

Fifth circuit.—Mandates shall issue at any time after twenty-one days from the date of the decision, unless an application for a rehearing has been granted or is pending. A copy of the opinion of this court shall accompany the mandate when a new trial or further proceedings are to be had in the lower court, and the charge for such copy shall be taxed in the costs of the case. *Provided* that in all cases entitled to precedence in this court under § 7 of the act approved March 3, 1891, and amendments thereto, the mandate or other proper process shall issue after the expiration of seven days from the date of the decision, unless otherwise ordered by the court or one of the judges.

CUSTODY OF PRISONERS ON HABEAS CORPUS.

Sixth circuit.—1. Pending an appeal from the final decision of any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in the custody of the court or judge, or be enlarged upon recognizance, as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

MODELS, DIAGRAMS AND EXHIBITS.

Seventh circuit.—Models, diagrams and exhibits of material forming part of the evidence taken in the court below, and in any case pending in this court on writ of error or appeal, shall be placed in the custody of the marshal for the use of this court at least ten days before the case is heard or submitted; and shall be taken away by the parties within one month after the case is decided. When this is not done, it shall be the duty of the marshal to notify the counsel in the case, by mail or otherwise, of the requriements of this rule, and, if the articles are not removed within a reasonable time after the notice is given, he shall destroy or make such other disposition of them as to him may seem best.

Eighth circuit.—Same as in second circuit.

Ninth circuit.—Beginning after the word "appertain," the rule concludes as follows in this circuit: Such mandate, if not stayed by the order of the court, shall be issued on the expiration of thirty days from the date of such final determination, unless within said time a petition for rehearing be filed,

in which case the mandate shall be stayed until five days after the determination of such petition.

RULE 33.

CUSTODY OF PRISONERS ON HABEAS CORPUS.

1. Pending an appeal from the final decision of any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or judge, or be enlarged upon recognizance, as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

In the **Third circuit** this is rule 31.

MANDAMUS AND PROHIBITION.

Sixth circuit.—1. The alternative writ of mandamus will not be issued, but on proper showing an order to show cause will be made.

2. A party desiring a writ of mandamus or prohibition shall file his petition therefor and showing in support thereof together with such brief or memorandum as he may desire. These need not be, at this time, printed, and notice need not be given. He shall deposit ten ($10) dollars with the clerk on account of fees. The clerk shall enter the application on his docket, and informally submit the papers to the court.

3. If the court is of the opinion that the application justifies a hearing, an order to show cause will be entered returnable as promptly as the situation permits; if of contrary opinion, an order of denial will be made, and the clerk shall notify the applicant accordingly, enter the case on his docket as closed and return to the applicant the surplus, if any, of the fee deposited.

If such order to show cause is made, the clerk shall deliver a certified copy to the applicant who shall cause the same to be served within the time and in the manner fixed in the order. An answer or return shall be filed on or before the return day as specified in the order or as extended by a judge of this court. Unless within ten days after the filing of such answer or return the appellant makes special motion to award and frame issue, or, if an issue, then upon the return of the proceedings thereon, and unless the court orders a hearing as upon motion, the matter shall stand for hearing upon the calendar and the clerk shall receive the remaining five dollars of the usual fee deposit, estimate and require a deposit for printing and print the record, briefs shall be filed, and the matter in all respects proceed like other docketed causes.

LAW LIBRARY.

Seventh circuit.—1. The library of the court shall be under general supervision and custody of the clerk of the court.

2. No bonus shall be removed from the library except upon a written order of a judge of this court, except, that during the sessions of the court any lawyer who has a case on the docket, upon written application to the clerk and upon the clerk's written order, may take from the library not exceeding three volumes at a time, being responsible for the return thereof within twenty-four hours and in default of return shall pay to the clerk for the library fund twice the value thereof, but if returned in good condition one dollar for each day's detention beyond the limited time.

RULE 34.

MODELS, DIAGRAMS AND EXHIBITS OF MATERIAL.

1. Models, diagrams and exhibits of material, forming a part of the evidence taken in the court below, in any case pending in this court, on writ of error or appeal, shall be placed in the custody of the marshal of this court at least ten days before the case is heard or submitted.

2. All models, diagrams, and exhibits of material, placed in the custody of the marshal for the inspection of the court on the hearing of a case, must be taken away by the parties within one month after the case is decided. When this is not done it shall be the duty of the marshal to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

In the **Second circuit,** § 2 is as follows, and § 3 is added:

2. Three copies must be furnished for the use of the court of any maps, charts, plans, diagrams, or other papers or documents which it is intended to refer to on the argument, and which are not contained in the transcript of record as certified from the court below.

3. All exhibits of material in customs cases must be filed with the clerk at the time of filing the transcript of record, and such exhibits will be returned to the clerk of the district court at the expiration of sixty days from the decision of the case by this court. All other models, diagrams, and exhibits of material placed in the custody of the clerk for the inspection of the court on the hearing of a case must be taken away by the parties within one month after the case is decided. It shall be the duty of the clerk to notify the counsel in the case, by mail or otherwise, of the requirements of this rule: and if the articles are not removed within the time above specified, he shall destroy them, or make such other disposition of them as to him may seem best.

PETITION TO REVISE IN BANKRUPTCY.

Sixth circuit.—1. A petition to revise shall contain, first, a concise history

of so much of the proceedings before the referee and the district court as may be necessary to make plain the errors assigned; second, an assignment of the errors in respect to which revision in matter of law is sought; third, as exhibits to the petition, copies certified by the clerk of the district court of each paper or proceeding relied upon to support the errors assigned; and fourth, any findings of fact that may be filed pursuant to clause 2 hereof; but a petition to revise shall not be filed so late as to delay the hearing of any appeal that may have been taken in the same matter; and it may incorporate, by reference and without repeating, any parts of the return in such appeal.

2. Whenever the district court has made any order in a proceeding in bankruptcy which involves or depends upon facts made to appear otherwise than solely by the pleadings in the matter, and the district judge is notified in writing by any party that he intends to file a petition to revise and deems finding of fact to be necessary, it shall be the duty of the district judge, as soon as possible, to make and file with the clerk of the district court his findings of fact in such matter.

3. At or before the filing of such petition, a complete copy thereof shall be served upon counsel for each separate, adverse interest, and the petition, when offered for filing, shall contain due proof or acknowledgment of such service.

4. Unless within ten days after the filing of such petition an adverse party in interest shall file an answer denying the accuracy of the exhibits to the petition, or setting out as exhibits certified copies of additional papers or proceedings which are thought to bear upon the errors assigned, the accuracy and completeness of the exhibits shall be presumed to be admitted. Such answer may also incorporate by reference any orders or records in any co-pending appeal.

5. Upon the coming in of such answers or the expiration of such ten days, such petition shall stand for hearing, and the clerk shall estimate and require deposit for and cause the record to be printed, and briefs shall be filed, all as in other causes.

This concludes the rules in the **Sixth circuit.**

WRITS OF ERROR IN CRIMINAL CASES.

Seventh circuit.—Writs of error from this court to review criminal cases tried in any district court of the United States within this circuit, may be allowed in term time or in vacation by the circuit justice assigned to this circuit, or by any of the circuit judges, within the circuit or by any district judge within his district, or the proper security be taken, and the citation signed by him, and he may also grant a supersedeas and stay of execution of proceedings, pending the determination of each writ of error.

2. Where such writ of error is allowed in the criminal cases aforesaid, the district court before which the accused was tried or the district judge of the district wherein he was tried, within his district, or the circuit justice assigned to this circuit, or any of the circuit judges within the circuit, shall have the power, after the citation has been duly served, to admit the accused to bail and to fix the amount of such bail.

This concludes the rules in the **Seventh circuit.**

RULE 35.

ERROR IN CRIMINAL CASES.

On or after the allowance of a writ of error in a criminal case, cognizable by this court, the justice or judge who allowed the writ, or the court which entered the judgment, or any judge thereof, shall have power to admit to bail the plaintiff in error, according to the rules of law applicable to his case.

ALLOWANCE OF APPEALS AND WRIT OF ERROR—BAIL.

Second circuit.—1. An appeal or writ of error from a district court to this court in the cases provided for in §§ 6 and 7 of the act entitled "An Act to Establish Circuit Courts of Appeals and to Define and Regulate in Certain Cases the Jurisdiction of the Courts of the United States, and for Other Purposes," approved March 3, 1891, and acts to amend said act approved February 18, 1895, and January 20, 1897, may be allowed in term time or vacation by the circuit justice or by any circuit judge within the circuit or by any district judge within his district, and the proper security be taken and the citation be signed by him, and he may also grant a supersedeas and stay of execution or of proceedings, pending such writ of error or appeal.

2. Where such writ of error from this court is allowed in the case of a conviction of an infamous crime or in any other criminal case in which it will lie, the district court or the judge thereof, or any circuit judge of the circuit or the circuit justice, shall have power, after the citation is served, to admit the accused to bail in such amount as may be fixed.

SATURDAY CONFERENCE DAY.

Fourth circuit.—Clerk in making his docket shall not set down for argument any cause for any Saturday of the term for which such docket is intended, and this court will meet on said days for consultation only.

ORDER IN RELATION TO ASSIGNMENT OF CASES FOR HEARING.

Fifth circuit.—Unless otherwise ordered by the senior circuit judge, thirty days prior to the opening of a regular session of this court, the clerk is directed to assign cases for hearing as follows:

At Atlanta, Georgia, four cases per day for the first three days of each week;

At Montgomery, Alabama, four cases for the first three days of each week;

At Fort Worth, Texas, four cases per day for the first three days of each week;

At New Orleans, Louisiana, two cases per day for the first three days of each week.

The above assignments shall be made in accordance with existing law

regulating the return of appeal, writs of error and other appellant proceedings in the fifth judicial circuit: *Provided* that cases entitled by law to preference in hearing and bankruptcy cases shall be assigned, and cases, whether preference or not, upon stipulation of the parties filed with the clerk and approved by the court, be assigned for hearing at any other place or session of this court designated in such stipulation.

Except as hereinafter provided, the assignment of cases at New Orleans, Louisiana, shall be grouped by states, so as to permit the hearing of cases from one state before the cases from the next state in order shall be called.

WRITS OF ERROR IN CRIMINAL CASES.

Eighth circuit.—1. Writs of error to review criminal cases tried in any district court of the United States within this circuit, which may be reviewed under the provisions of The Judicial Code, approved March 3, 1911, may be allowed in term time or in vacation by the circuit justice assigned to this circuit, or by either of the circuit judges within the circuit, or by any district judge within his district, and the proper security be taken, and the citation signed by him, and he may also grant a supersedeas and stay of execution or proceedings, pending the determination of such writ of error.

2. Where such writ of error is allowed in the criminal cases aforesaid, the district court before which the accused was tried, or the district judge of the district wherein he was tried, within the district, or the circuit justice assigned to the circuit, or either of the circuit judges within the circuit, shall have the power, after the citation has been duly served, to admit the accused to bail in such amount as may be fixed, such bail bond to be, as near as may be, in the form prescribed in the Appendix to these rules.

ASSIGNMENT OF CAUSES FOR HEARING.

Ninth circuit.—1. Thirty days prior to the opening of any calendar session of a court, the clerk is directed to assign causes for hearing at the rate of one case for the first day of each term or session, and two cases per day for each of the ensuing court days of such term or session. The causes shall be grouped by statutes, and assignments made, so as to permit the hearing of causes from one state before the causes from the next state in order shall be called; causes from the northern district of California shall be assigned for hearing last. Any causes entitled by law to preference in hearing shall be first assigned and take precedence over other causes from the same state.

2. A stipulation to continue a case to the foot of the calendar or in any way change the day assigned for hearing, will not be recognized as binding upon the court, and no such change will be made except by order of the court for reason shown.

3. Ten days before each calendar session of the court the clerk shall prepare and cause to be printed a calendar of the causes assigned for the approaching session.

RULE 36.

PETITION IN BANKRUPTCY CASES.

First circuit.—1. On the filing of a petition for the exercise of the power of superintendence and revision vested in this court by the act to establish a uniform system of bankruptcy throughout the United States, approved July 1, 1898, or any accounts in addition thereto or amendatory thereon, the clerk shall issue, as of course, an order to show cause, returnable two weeks from the date thereof, which shall be served by copy on each of the adverse parties named in the petition as a person against whom relief is desired, or his solicitor in the proceeding in the district court, at least one week before the return day of the order, which service shall be made by the marshal or his deputy in the district where the parties or solicitor served resides.

This concludes the rules in the **First circuit.**

SECURITY FOR CLERK'S FEES—TAXING COSTS.

Second circuit.—1. In all cases the plaintiff in error or appellant on docketing a case and filing a record, shall enter into an undertaking with the clerk, for the payment of his fees or otherwise satisfy him in that behalf.

2. At the expiration of ten days after a case has been decided, the order or decree thereon will be entered by the court, and the clerk will thereupon prepare and tax the bill of costs and issue the mandate. Within said ten days the parties may file with the clerk their proposed orders or decrees and bills of costs with proof of service of the same upon the opposing attorneys.

BANKRUPTCY.

Fourth circuit.—1. Upon the filing of the petition for review as provided for in § 24 (b) of the act to establish a uniform system of bankruptcy throughout the United States, approved July 1st, 1898, the clerk of this court shall docket the cause, and shall forthwith serve a certified copy of petition upon the respondent or respondents, or their solicitors, through the mail or otherwise, together with a notice to the respondent or respondents, to answer, demur, or move to dismiss the said petition within the fifteen days from the date of such notice.

2. The petitioner shall cause a certified printed transcript of the record and proceedings of the bankruptcy court of the matter to be reviewed, to be filed in the clerk's office of this court within forty days from the date of the filing of his petition for review.

3. By consent of all parties to the cause, by stipulation in writing filed with the clerk of this court, the petitioner may cause a transcript of the record and proceedings of the bankruptcy court of the matter to be reviewed to be filed in the clerk's office of this court in lieu of a certified printed transcript as above mentioned, and thereupon the clerk of this court shall cause the record to be printed as provided in the 23d rule of this court, and furnish counsel on both sides with three copies each.

4. And such causes shall stand for hearing in their regular order. But either side may, upon ten days' notice given to the opposing counsel, have the cause heard, either at term time, or in vacation, or in chambers, upon the briefs, unless at its own suggestion, or for good cause shown, the court shall order oral argument.

5. That all causes coming up by appeal as provided in § 25 of said bankruptcy act shall stand for hearing in this court, either in term time or in vacation, and may be called up by either party upon ten days' notice, as provided in § 4 of this rule.

6. All rules of this court (except as herein modified) shall apply to the proceedings in bankruptcy to which this rule relates.

7. Nothing herein shall prevent the court, from time to time, from making, for special cause, orders diminishing or enlarging the times named herein, or any other order suitable to expedite the proceeding or to prevent injustice.

ASSIGNMENT OF JUDGES.

Fifth circuit.—It is ordered that whenever a full bench of three judges shall not be made up by the attendance of the associate justice of the Supreme Court assigned to the circuit, and of the circuit judges, so many of the district judges, in the order of seniority of their respective commissions and qualified to sit, as may be necessary to make up a full court of three judges, are hereby designated and assigned to sit in this court: *Provided, however*, that the court may at any time, by particular assignment, designate any district judge to sit as aforesaid.

PETITIONS TO REVISE.

Eighth circuit.—A petition to revise, under the provisions of § 24 (b) of the bankruptcy law, approved July 1st, 1898, shall be filed and designated as an original action in this court, and be entitled, "————, Petitioner, v. ————, Respondent," and shall specifically designate the respondent or respondents upon whom the petitioner desires notice to be served, and a sufficient number of copies of such petition shall be furnished the clerk at the time of filing so that a copy may be served upon each of the respondents.

TERMS AND SESSIONS OF THE COURT.

Ninth circuit.—1. One term of this court shall be held annually on the first Monday of October and adjourned sessions on the first Monday of each month in the year. All sessions shall be held at San Francisco, unless otherwise especially ordered by the court.

2. The October, February, and May sessions shall be known as calendar sessions, and shall be sessions for the trial of all causes that shall have been placed upon the calendar in pursuance of rule 35.

3. A term of this court shall be held annually in the city of Seattle, in the state of Washington, and in the city of Portland, in the state of Oregon. The Seattle term shall be held beginning upon the second Monday in September, and the term at Portland shall be held beginning upon the third

Monday in September. All appeals and writs of error from the district courts for the districts of Washington, the transcripts of which shall be filed in this court between the first day of April and the first day of August of each year, shall be heard at said annual term in the city of Seattle, unless it be stipulated by the parties thereto that they be heard at San Francisco. All other appeals and writs of error from said district courts for those districts shall be heard at San Francisco, unless it be stipulated by the parties thereto that they be heard at said annual term in the city of Seattle. All appeals and writs of error from the district court for the district of Oregon, the transcripts of which shall be filed in this court between the first day of April and the first day of August of each year, shall be heard at said annual term in the city of Portland, unless it be stipulated by the parties thereto that they be heard at San Francisco. All other appeals and writs of error from said district court for that district shall be heard at San Francisco, unless it be stipulated by the parties thereto that they be heard at said annual term in the city of Portland. Appeals and writs of error from the district courts of the districts of Idaho and Montana and from the district court of Alaska, may, upon the stipulation of the parties thereto, be heard at the annual term, and be held either at Seattle or Portland.

RULE 37.

CITATIONS OF AUTHORITIES.

Second circuit.—In the preparation of briefs any citations made from "Federal Cases" must be accompanied by the citation of the original report of the case, and where a citation is made from the American Bankruptcy Reports, citation in the Federal Reporter or United States Supreme Court Reports must also be given. If the case is not reported elsewhere than in Federal Cases or American Bankruptcy Reports, the fact must be so stated.

Fourth circuit.—The foregoing rules shall be in force on and after April 1st, 1912.

Since April 1st, 1912, another rule has been added in the **Fourth circuit,** numbered 38.

WRITS OF ERROR IN CRIMINAL CASES.

Fifth circuit.—1. Writs of error to review criminal cases tried in any district or circuit court of the United States within this circuit, which may be reviewed under the provisions of the act of March 3, 1891, creating this court, and the act of Congress amendatory thereof, approved January 20, 1897, may be allowed in term time or in vacation by the circuit justice assigned to this circuit by either of the circuit judges, or by any district judge who presided on the trial, and the proper security be taken, and the citation be signed by him, and he may also grant a supersedeas and stay of execution or proceedings pending the determination of such writ of error.

2. Where such writ of error is allowed in any criminal case as aforesaid, the circuit court or district court, before which the accused was tried, or the trial judge, or the circuit justice assigned to the circuit, or either

of the circuit judges, shall have the power, after the citation has been duly served, to admit the accused to bail in such amount as may be fixed, such bail bond to be, as near as may be, in the form prescribed in the Appendix to these rules.

APPENDIX TO RULE 37.

(Form of Appearance Bond on Writ of Error in Criminal Cases.)

Know all men by these presents:

That we, ————, as principal, and ————, as sureties, are held and firmly bound unto the United States of America in the full and just sum of ———— dollars, to be paid to the said United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this —— day of ————, in the year of our Lord one thousand eight hundred and ninety————.

Whereas, lately at the ——— term, A. D. 189—, of the ———— court of the United States for the ———— district of ————, in a suit pending in said court, between the United States of America, plaintiff, and ————, defendant, a judgment and sentence was rendered against the said ————, and the said ———— has obtained a writ of error from the United States Circuit Court of Appeals for the Fifth Circuit, to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Fifth Circuit, at the City of New Orleans, Louisiana, thirty days from and after the date of said citation, which citation has been duly served.

Now the condition of the above obligation is such that if the said ———— shall appear in the United States Circuit Court of Appeals for the Fifth Circuit, on the first day of the next term thereof, to be held at the city of ————, on the first Monday in ————, A. D. 189—, and from day to day thereafter during said term, and from term to term, and from time to time, until finally discharged therefrom, and shall abide by and obey all orders made by the said United States Circuit Court of Appeals for the Fifth Circuit, in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence of the said ———— court against him shall be affirmed by the said United States Circuit Court of Appeals for the Fifth Circuit then the above obligation to be void, else to remain in full force, virtue and effect.

———————— [Seal]
———————— [Seal]
———————— [Seal]

Approved:

————————
Judge of the ————————

This concludes the rules in the Fifth circuit.

ORDER OF COURT.

Eighth circuit.—1. Before the filing of a petition to revise, the same shall be presented to the court, or one of the circuit judges, for leave to file the same and for an order fixing the return day to the notice required by law.

2. When such petition is accompanied by a written consent that the petition to revise may be filed and waived by the respondent or respondents, or their counsel, of such notice, no notice will be issued. In such cases the case will be docketed by the clerk.

PHOTOGRAPH OF CHINESE TO BE ATTACHED TO BAIL BOND.

Ninth circuit.—Whenever, in cases of deportation of Chinese, the defendant be admitted to bail pending appeal before the bond be approved and the party released from custody, a photograph of the defendant shall be attached to said bond.

This concludes the rules in the **Ninth circuit.**

RULE 38.

PETITIONS TO REVIEW IN BANKRUPTCY.

Second circuit.—Petitions to review orders in bankruptcy filed under the provisions of § 24b of the bankruptcy act must be filed and served within ten days after the entry of the order sought to be reviewed, and a transcript of the record of the proceedings in the bankruptcy court of the matter to be reviewed must be filed and the cause docketed within thirty days thereafter, but the judge of the bankruptcy court may for good cause shown enlarge the time for filing the petition or record, the order of enlargement to be made and filed with the clerk of this court before the expiration of the times hereby limited for filing the petition and record respectively.

This concludes the rules in the **Second Circuit.**

Fourth circuit.—On and after February 1, 1913, the contents of transcripts of record on appeal in equity and admiralty causes and on appeal (as distinguished from petitions for revision) in bankruptcy causes, shall be governed by rules 75, 76, and 77 of the Rules of Practice for the Courts of Equity of the United States, promulgated by the Supreme Court of the United States November 4, 1912, which rules are as follows:

This concludes the rules in the **Fourth circuit.**

The remainder of the rules in the **Eighth circuit** are as follows:

NOTICE.

The notice to be given, as provided by law, shall be issued by the clerk of this court, under the seal thereof, and shall be addressed to the respondent or respondents and be served by the marshal unless an acknowledgment or acceptance of services thereof is made by the respondent or respondents, or their counsel.

RULE 39.

RESPONSE.

The response to the petition, when the respondent elects to make a written response, shall be filed within thirty days after the service of the notice of the filing of a waiver thereof.

RULE 40.

PRINTING OF RECORD.

1. The clerk shall cause the petition and exhibits thereto, if any, and the order, notice, and response, if any, to be printed as soon as convenient after the response is filed or the time for filing such response has expired and shall distribute the printed copies of same to counsel for the respective parties, as soon as the same are printed.

RULE 41.

BRIEFS AND ARGUMENTS.

Twenty copies of the brief and argument in behalf of petitioner shall be printed and filed twenty days before the day set for the hearing and twenty copies of the brief and argument for the respondent or respondents shall be printed and filed eight days before the day of hearing.

RULE 42.

HEARING.

1. Petitions to revise filed in vacation, shall be assigned by the clerk for hearing in their regular order at the next session or term of the court in the same manner as appeals and writs of error in other cases.

2. Petitions to revise filed during a session of the court, when a sufficient showing of urgency is presented, may be set for hearing at that term and upon such terms and conditions as the court may direct.

3. Petitions to revise assigned by the clerk in their regular order as provided in section one of this rule, when such assignment is for a day near the close of the session, may be advanced by order of the court and set for an earlier day, upon good cause shown therefor by either of the parties.

RULE 43.

COSTS.

1. The costs and fees now provided by law in cases upon appeal or writ of error, shall, so far as the same are applicable, be taxed on petitions to revise.

2. Upon the determination of a petition to revise such order as to costs will be made as the court may deem necessary.

RULE 44.

PROCEDENDO.

1. In all cases on a petition to revise wherein the action or decree of the district court, complained of, is disapproved by this court, the clerk shall, at the expiration of thirty days from and after the date of entering the decree in this court, issue process in the nature of a procedendo to the said district court for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such district court in conformity with the decree of this court.

2. In all cases on petition to revise, wherein the action or decree of the district court, complained of, is approved and confirmed, or certain petition dismissed, by this court, the clerk shall at the expiration of thirty days certify a copy of such decree to the district court.

RULE 45.

APPEALS AND WRITS OF ERROR IN BANKRUPTCY CASES.

1. The appeals and writs of error provided for by § 25 of the bankruptcy law, approved July 1st, 1898, shall be governed by the same rules and regulations as to costs and procedure as are provided by this court for appeals and writs of error in other cases.

ADDENDA.

[Form of Writ of Error for use in the United States Circuit Court of Appeals, Eighth Circuit.]

UNITED STATES OF AMERICA, ss.

The President of the United States of America,

To the Honorable Judges of the (1) .....
..... Greeting:

BECAUSE, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said.....Court, before you, at the.....Term, 19 , thereof, between (2).....
.....
a manifest error hath happened, to the great damage of the said (3).....
.....as by .....
complaint appears.

NOTES—[1] Here insert correct name of the Court to which the writ is addressed and whose judgment is to be reviewed.

[2] Here insert correct style of cause showing who was plaintiff and who defendant in Court below.

[3] Here insert name of party who sues out writ of error.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the ..... Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of ....., and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the ..... Circuit, on or before the (4) .....day of .....19...., to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States, this .....day of .....in the year of our Lord one thousand nine hundred.....

ISSUED at office in.....with the seal of the (5) ..... and dated as aforesaid.

.....
Clerk of .....

ALLOWED BY

.....
.....Judge.

[Form of Return to be indorsed on Writ of Error by the Clerk of the Court to which the Writ is addressed.]

UNITED STATES OF AMERICA, }
} ss.
..... }

In obedience to the command of the within Writ, I herewith transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In Witness Whereof, I hereto subscribe my name and affix the seal of (6) .....

.....
Clerk of .....

[4] Rule XIV. subdivision 5, requires writs of error and appeals to be made returnable sixty days after citation is signed.

This blank must be filled accordingly, naming a day not more than sixty days after the date of the citation.

[5] This blank should be so filled as to show whether the writ is issued by the clerk of a United States District Court or by the Clerk of the Circuit Court of Appeals.

[6] Here describe the Court to which the writ is addressed.

[Form of Citation.]

UNITED STATES OF AMERICA,

To ..... Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the ..... Circuit, at the City of ....., sixty days from and after the day this citation bears date, pursuant to (1) ..... filed in the Clerk's Office of the (2) .....wherein ..... is (3) ..... and you are (4) ....., to show cause, if any there be, why the (5) ..... rendered against the said (6) ..... as in said (7) ..... mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

WHEREAS, lately at the ..... term of the ..... Judge of ..... this ..... day of .....A. D. 19.....

.....

Judge of .....

(Form of Supersedeas or Cost Bond.)

KNOW ALL MEN BY THESE PRESENTS:

That we, ... are held and firmly bound unto ..... in the full and just sum of ..... to be paid to the said ..... heirs, executors, administrators, successors or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally by these presents. Sealed with our seals, and dated this ..... day of ....., in the year of our Lord one thousand nine hundred .....

WHEREAS, lately at the ..... term of the ..... in a suit depending in said Court between ....., plaintiff, and ....., defendant, ... was rendered against the said ..... and the said ..... has obtained ..... of the said Court to reverse the ..... in the aforesaid suit, and a citation directed to the said ..... citing and admonishing ..... to be and appear in the United States Circuit Court of Appeals for the ..... Circuit, at the City of ....., sixty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said ..... shall prosecute said ..... to effect,

NOTES—[1] Insert (a writ of error) or (an appeal allowed and).
[2] Insert name of Court to which writ of error is addressed, or from which appeal is allowed.
[3] Insert Plaintiff in Error or Appellant.
[4] Insert Defendant in Error or Appellee.
[5] Insert Judgment or Decree.
[6] Insert Plaintiff in Error or Appellant.
[7] Insert Writ of Error or Appeal.

and answer all damages and costs if ..... fail to make good ..... plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

Approved by ..... (Seal)

..... (Seal)

..... (Seal)

(The foregoing bond and citation is adapted for appeals in equity cases as well as in cases of writs of error in actions at law.)

[Form of Appearance Bond on Writ of Error in Criminal Cases.]

KNOW ALL MEN BY THESE PRESENTS:

That we, ...

as principal, and .....

as sureties, are held and firmly bound unto the United States of America in the full and just sum of ..... Dollars, to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this ..... day of ..... in the year of our Lord, One Thousand Nine Hundred .....

WHEREAS, lately at the .....Term, A. D. 19 , of the..... ..... Court of the United States for the ..... District of ....., in a suit depending in said Court between the United States of America, plaintiff, and .... defendant...., a judgment and sentence was rendered against the said .... and the said ..... has obtained a writ of error from the United States Circuit Court of Appeals for the ..... Circuit, to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the ..... Circuit, at the city of ....., ..., sixty days from and after the date of said citation, which citation has been duly served.

Now the condition of the above obligation is such that if the said .... shall appear either in person or by attorney in the United States Circuit Court of Appeals for the ..... Circuit on such a day or days as may be appointed for the hearing of said cause in said Court and prosecute his said writ of error and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the ..... Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said Court may direct, if the judgment and sentence against him shall be affirmed or the writ of error or appeal is dismissed; and if he shall appear for trial in the ..... Court of the United States for the ..... District of .... on such day or days as may be appointed for a retrial by said .... Court and abide by and obey all orders made by said Court pro-

vided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the ..... Circuit; then the above obligation to be void, otherwise to remain in full force, virtue and effect.

..... [SEAL.]
..... [SEAL.]
..... [SEAL.]

Approved:—

.....
Judge of the .....

INSTRUCTIONS AS TO APPLICATIONS FOR WRITS OF CERTIORARI UNDER § 240 OF THE JUDICIAL CODE.

The following are the requirements of the Supreme Court on applications for writs of certiorari under § 240 of the Judicial Code.

Petitions are docketed in this court as

....., Petitioner, *vs.* ....., Respondent.

Before the petition will be docketed there must be furnished this office:

1. An original petition, with written signature of counsel.

2. A certified copy of the transcript of the record, including all proceedings in the circuit court of appeals.

3. An appearance of counsel for petitioner, signed by a member of the bar of this court.

4. A deposit of twenty-five dollars on account of costs.

Before submission of the petition there must be furnished:

1. Proof of service of notice of date fixed for submission and of copies of petition and brief upon counsel for the respondent. About two weeks' notice should be given.

2. Twenty-five (25) printed copies of the petition.

3. Twenty-five (25) printed copies of brief in support of petition, if any such brief is to be filed.

4. At least nine (9) uncertified copies of record, which must contain all the proceedings in the circuit court of appeals. These copies may be made up by using copies of the record as printed for the circuit court of appeals and adding thereto printed copies of the proceedings in that court. If a sufficient number of records thus made up can not be obtained, making it necessary to reprint the record for use on the hearing of the petition, fifty (50) copies must be printed under my supervision, in order that, should the petition be granted, there may be a sufficient number for use on the final hearing.

Monday being motion day, some Monday must be fixed upon for the submission of the petition. No oral argument is permitted on such petitions, but they must be called up and submitted in open court by counsel for petitioner, or by some attorney in his behalf.

If a respondent desires to oppose a petition, twenty-five (25) copies of a brief for such respondent must be filed. These briefs must bear the name of a member of the bar of this court, who should also enter an appearance for the respondent. It is not necessary, however, for such counsel to be present in court when the petition is submitted.

All papers in the case must be filed not later than the Saturday preceding the Monday fixed for the submission of the petition.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

INSTRUCTIONS AS TO TAKING APPEALS, SUING OUT WRITS OF ERROR, MAKING UP RECORDS, ETC.

METHOD OF TAKING APPEALS.

Writs of error and citations are no longer made returnable to the term day of the appellate court, but are made returnable not exceeding forty days from the day of signing the citation, whether that day, which is the return day, fall in vacation or in term time; and the record must be filed in the clerk's office of this court before the return day, unless the time be enlarged as provided in § 1 of rule 16, and § 6 of rule 23. In that case the order of enlargement must be filed with the clerk of this court.

Rule 11, entitled "Assignment of Errors," requires the plaintiff in error, or appellant, to file with the court below, with his petition for the writ of error or appeal, an assignment of errors. Appeals and writs of error should be prayed for by petition in writing addressed to the court below, or to the judge in vacation, who allows the writ or the appeal, by an order in writing, approves the appeal or supersedeas bond, and signs the citation.

In cases brought up by writ of error from the district court, the clerk of the district court, or the clerk of this court, issues the writ of error, which writ fixes the return day, and the citation should bear the same return day. But in cases of appeal (in admiralty or in equity), the citation alone fixes the return day.

All appeals, therefore, whether by writ of error or appeal, should hereafter be taken in the following manner:

1. Petition in writing for the appeal, or writ of error, addressed to the court below, or the judge thereof in vacation.

2. The petition must be accompanied with an assignment of errors, and a prayer for reversal.

3. Appeal or writ of error bond, approval thereof, and the signing of the citation by the judge allowing the appeal or writ.

4. Order in writing of the judge allowing the writ of error or appeal.

5. Issuing the writ of error by the clerk of the district court or under this court.

6. In case it is desired to have the writ of error issued by the clerk of this court, a certified copy of the petition and order allowing the writ, under the seal of the court with a fee of five dollars for issuing it, must be transmitted to the clerk of this court, and the writ will be issued and forwarded to the clerk of the court below.

All of the above papers and proceedings should be filed by the clerk of the lower court. The writ of error and the citation, the originals of which, after having been duly served, must be attached to and bound in the record at their respective places. (For service of writ of error see § 1007, R. S.)

In cases brought up by petitions to superintend and revise in bankruptcy, see rule 36.

Rules of this court, blank writs of error, appeals and supersedeas bonds, citations, and orders of appearance may be had of the clerks of the lower courts or of the clerks of this court upon application.

MAKING UP RECORDS.

In making up a transcript of the record, clerks are requested to make a

distinct title or heading to each paper or proceeding copied into the record, with the date of filing the same, or the date of such proceeding and to write upon but one side of the paper in a clear, legible hand. And a complete index should be made in chronological order and attached to the record at the beginning of it. In order to have uniformity, records should be commenced in the style and the term of the court to which the judgment or decree is entered as the following form:

The United States of America,

District of , to-wit:

At a District Court of the United States for the ..... District of ....., begun and held at the Court-house in the city of ....., on the first Monday of ..... being the ..... day of the same month, in the year of our Lord one thousand, nine hundred and .....

Present: The Honorable ....., District Judge, for the ..... District of .....

Among others were the following proceedings, to-wit:

A. B. } In Equity (or)
vs. } In Admiralty (or)
C. D. } At Law.

Bill of Complaint (or)
Libel (or)
Declaration (or Complaint)
Filed , 191 (date of filing)."

(Copy same with all material indorsements, and any accompanying papers and exhibits, and so on with every paper or proceeding in the case.)

As to the general order of making up a record, the following examples are given:

In Equity.	In Admiralty.	At Law.
1. Style of Court as Above.	1. Style of Court as Above.	1. Style of Court as Above.
2. Bill of Complaint, etc.	2. Libel.	2. Declaration.
3. Process.	3. Process.	3. Process.
4. Marshal's Return.	4. Marshal's Return.	4. Marshal's Return.
5. Answer.	5. Claim.	5. Plea or Demurrer, etc.
6. Replication.	6. Stipulation.	6. Joining of Issue.
7. Testimony and Exhibits for Complainant.	7. Answer.	7. Impaneling Jury.
8. Testimony and Exhibits for Defendant.	8. Testimony and Exhibits for Libellant.	8. Verdict.
9. Testimony and Exhibits in Rebuttal.	9. Testimony and Exhibits for Respondent.	9. Judgment.
10. Opinion.	10. Testimony and Exhibits in Rebuttal.	10. Bill of Exceptions.
11. Decree.	11. Opinion.	11. Assignment of Errors.
12. Assignment of Errors.	12. Decree.	
	13. Assignment of Errors.	

FORM OF MEMORANDUM TO BE INSERTED IN A COMMON LAW CASE AS PROVIDED BY SEC. 7 OF RULE 14.

(1) Petition for writ of error filed ..... day of ....., 19...
(2) Writ of error granted ..... day of ....., 19...
(3) Writ of error issued ..... day of ....., 19...
(4) Copy of writ of error lodged for adverse party ..... day of ....., 19 .
(5) Appeal Bond: Dated ..... day of ....., 19...
Penalty $
Obligors: .....
.....
.....
Condition for costs and damages (or for costs).
(6) Citation. Dated ..... day of ....., 19...
Return. Dated ..... day of ....., 19...
Or Waiver of service Dated ..... day of ....., 19...

Note: Similar memorandum *mutatis mutandis* to be used in admiralty and equity cases.

The petition for writ of error or appeal, the order granting writ of error or appeal, the writ of error, the appeal bond, the citation, the return of service or waiver of service should not be copied into the record, but the originals thereof shall be sent up and accompany the transcript of the record.

In transcribing bills of exceptions into the record in cases at law, clerks will carefully inspect such bills of exceptions and wherever the words "here insert," occur, the paper or matter called for should be bodily incorporated into the record at that place.

In making up records in admiralty cases, the following should be omitted (See rule 52 of the Supreme Court in Admiralty.):

1. The continuances.

2. All motions, rules, and orders not excepted to which are merely preparatory for trial.

3. The commissions to take depositions, notices therefor, their captions, and certificates of their being sworn to, unless some exception to a deposition in the district court was founded on some one or more of these: in which case, so much of either of them as may be involved in the exceptions shall be set out. In all other cases it shall be sufficient to give the name of the witness and to copy the interrogatories and answers, and to state the name of the commissioner and the place where and the date when the deposition was sworn to, and in copying of depositions taken on interrogatory, the answer shall be inserted immediately following the question.

FORM FOR THE COVER OF A TRANSCRIPT OF THE RECORD.

TRANSCRIPT OF THE RECORD.

UNITED STATES CIRCUIT COURT OF APPEALS.

Fourth Circuit.

No. ————.

.....

Plaintiff in Error, or Appellant, or Petitioner,

versus

.....

Defendant in Error, or Appellee, or Respondent.

In error to (or appeal from or on petition for review from) the District Court of the United States for the ..... District of ....., at .....

DOCKETING CASES AND PRINTING RECORDS.

Upon a record being filed, the case is docketed and is put upon the calendar for argument at the next term, or adjourned term, occurring thereafter, provided the record has been printed and copies thereof are delivered to opposing counsel twenty days before the said term or adjourned term, as provided in sec. 2, rule 17.

Clerk or counsel transmitting a record to this court must accompany the same with an order of appearance for the appellant or plaintiff in error, and also with a deposit of $25 for account of his costs to accrue in this court, and the names and addresses of the attorneys on both sides.

The clerk of this court will immediately upon a transcript of the record being filed under rule 23, send to the counsel an estimate of the cost of printing, supervising fees, etc., which amount must be deposited, either in cash or by New York exchange, with the clerk within ten days after notice. See rule 23.

It is important that records should be made up and forwarded to this office as promptly as possible after the appeal or writ of error is allowed, and not held until the near approach of the next term.

Defendants in error, appellees, or respondents are required, at the time of entering their appearance by attorney, to make a deposit of $20 for account of costs to be incurred by them in this court. In case of affirmance, or dismissal, when all costs shall have been paid by the plaintiff in error, appellant, or petitioner, the said deposit will be returned. This is applicable to all cases except when the United States is defendant in error or appellee. See § 5, rule 16.

RULES IN ADMIRALTY.

UNITED STATES CIRCUIT COURT OF APPEALS.

In the **First, Second, Third, Fifth, Seventh,** and **Eighth circuits** these rules are the same as provided in General Admiralty Rule No. 52 of the Supreme Court, with the addition in the **First Circuit** of §§ 6 and 7 of rule 14 of the C. C. A.

In the **Fourth circuit** they are as follows:

Rules 1, 2, 3, 4, 5, 6, 7, 8, 10, and 11 are the same as corresponding rules in the **Ninth circuit,** and the remainder are as follows:

RULE 9.

NEW TESTIMONY—HOW TAKEN.

Such testimony shall be taken by deposition before any United States commissioner, or notary public, upon reasonable notice in writing given to the opposite party; or by commission issued out of this court with interrogatories annexed. Upon proper cause shown, the court may grant an open commission.

RULE 12.

WRIT OF INHIBITION.

A writ of inhibition may be awarded by this court on motion of the appellant to stay proceedings in the court below when circumstances require.

RULE 13.

MANDAMUS.

A mandamus may, in like manner, be obtained to compel a return of the apostles when unreasonably delayed by the clerk, or court below.

RULE 14.

CASES TO BE PLACED ON DOCKET.

Each case shall be filed on the docket as soon as the printing of the apostles is completed by the clerk.

RULE 15.

BRIEFS.

Sec. 1. Counsel for the appeal shall file with the clerk of this court, at least twenty days before the case is called for argument ten copies of a printed brief, and shall at the same time serve two copies thereof on the proctors of record, or on the counsel engaged upon the opposite side. This brief shall contain in order here stated:

(1) A statement of the nature of the appeal, the court from which the appeal is taken, and a concise abstract or statement of the case, presenting succinctly the questions involved, and the manner in which they were raised.

(2) If the pleadings have been amended in this court or new proofs have been taken, it shall be stated what amendments have been made and in what respect the new proofs have changed, or tended to change, the case as made in the court below.

(3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the folios of the record or to the numbers of the questions, and the authorities relied upon in support of each point.

Sec. 2. The counsel for the appellee shall file with the clerk of the court ten printed copies of his brief and serve two copies thereof at least ten days before the case is called for argument. His brief shall be of a like character with that required of the appellant, and in case new proofs are taken on behalf of the appellee, the brief shall so state and wherein the new proofs have changed the case as made in the court below.

Sec. 3. The reasonable expense of printing briefs shall be an item of taxable costs.

RULE 17.

EXTENSION OF TIME.

The time specified in the foregoing rule for any proceeding may be extended by order of judge of this court.

RULE 18.

WHEN RULES OF DISTRICT COURTS TO APPLY.

In all matters in civil causes of admiralty not expressly provided for by the foregoing rules of this court, the rules of practice of the district court

of the district by which the cause was decided, being in force at the time (not being inconsistent with these rules), will be adopted so far as may seem proper.

RULE 19.

WHAT GENERAL RULES SHALL BE DEEMED ADMIRALTY RULES.

The following of the General Rules of this Court, and no others, shall be deemed admiralty rules, viz.: Rules 3, 4, 5, 6, 7, 9, 11, 12; Sec. 4 of rule 14; Rules 15, 16, 17, 18, 19, 20, 21, 22, 23; Sec. 5 of General Rule 24; Rules 25, 26, 27, 28, 29; Sec. 4 of Rule 30; Rules 31, 32, 34, 36 and 37.

In the **Sixth circuit** these rules are same as the general Equity Rules.

In the **Ninth circuit** these rules are as follows:

1.

APPEALS AND NEW PLEADINGS.

An appeal to the circuit court of appeals shall be taken by filing in the office of the clerk of the district court, and serving on the proctor of the adverse party a notice signed by the appellant or his proctor that the party appeals to the circuit court of appeals from the decree complained of.

The appeal shall be heard on the pleadings and evidence in the district court, unless the appellate court, on motion, otherwise order.

2.

NOTICE AND BOND.

Sec. 1. When a notice of appeal is served, the appellant shall file in the clerk's office of the district court a bond for costs of the appeal, with sufficient surety in the sum of $250, conditioned that the appellant shall prosecute his appeal to effect and pay the costs, if the appeal is not sustained. Such security shall be given within ten days after filing the notice, or the appeal shall be deemed abandoned, and the decree of the court below enforced, unless otherwise ordered by a judge of this court.

This rule so far modifies rule 11 of the General Rules that a petition for an appeal and the allowance thereof is not required in an admiralty case, nor is the assignment of errors required to be filed with notice of appeal. The assignment of errors must, however, be sent up to the appellate court with the apostles, as required in rule 4 of the Admiralty Rules. (Kenney v. Louie, No. 939. Motion to dismiss appeal denied, May 6, 1903.)

Sec. 2. And if the appellant desires to stay the execution of the decree of the court below, the bond which he shall give shall be a bond with sufficient surety in such further sum as the judge of the district court or a judge of this court shall order, conditioned that he will abide by and perform what-

ever decree may be rendered by this court in the cause, or on the mandate of this court by the court below.

Sec. 3. The appellant shall, on filing either of such bonds, give notice of such filing, and of the names and residences of the sureties, and if the appellee, within two days, excepts to the sureties they shall justify, on notice, within two days after such exception.

3.

REVIEW IN PART ONLY.

The appellant may also, at his option, state in his notice of appeal that he desires only to review one or more questions involved in the cause, which questions must be clearly and succinctly stated; and he shall be concluded in this behalf by such notice, and the review upon such an appeal shall be limited to such question or questions.

4.

APOSTLES ON APPEAL TO CONTAIN.

Sec. 1. The apostles, on an appeal to this court, shall, in cases where a general notice of appeal is served, consist of the following:

(1) A caption exhibiting the proper style of the court and the title of the cause, and a statement showing the time of the commencement of the suit; the names of the parties, setting forth the original parties and those who have become parties before the appeal, if any change has taken place; the several dates when the respective pleadings were filed, whether or not the defendant was arrested, or bail taken, or properly attached, or erased and if so, an account of the proceedings thereunder; the time when the trial was had, and the name of the judge hearing the same; whether or not any question was referred to a commissioner, or commissioners, and if so, the result of the proceedings and report thereon; the date of the entry of the interrogatory and final decree; and the date when the notice of appeal was filed.

(2) All the pleadings, with the exhibit annexed thereto.

(3) All the testimony and other proofs adduced in the cause.

(4) The interlocutory decree and any order of the court which appellant may desire to have reviewed on the appeal.

(5) Any report of a commissioner or commissioners to which exception may have been taken, with the order or orders of the court respecting the same, and the exceptions to the report, and so much of the testimony taken in the proceedings as may be necessary to a review of the exceptions.

(6) All expense of the court, whether upon interlocutory questions or finally deciding the cause.

(7) The final decree, and the notice of appeal; and

(8) The assignment of error.

Sec. 2. All other papers shall be omitted unless otherwise ordered by the judge who heard the cause.

Sec. 3. Where the appellant shall appear specially and seek only to re-

view one or more questions in the cause, the apostles may, by stipulation between the proctors for the respective parties, contain only such papers and proceedings and evidence as are necessary to review the questions raised by the appeal.

5.

CERTIFYING RECORDS.

The appellant shall, within thirty days after giving notice of appeal, procure to be filed in this court the apostles certified by the clerk of the district court, or in case of a special appeal, the stipulated record, with the certification by the said clerk of all papers contained therein on file in his office.

6.

IF APPEARANCE OF APPELLEE NOT ENTERED.

If the appellee does not cause his appearance to be entered in this court within ten days after service on his proctor of notice that the apostles are filed in this court, the appellant may proceed *ex parte* in the cause, and have such decree as the nature of the case may demand.

7.

NEW ALLEGATIONS, ETC.

Upon sufficient cause shown, this court, or any judge thereof, may allow either appellant or appellee to make new allegations or pray different relief or interpose a new defense, or make new proofs. Application for such leave may be made at any time after the perfecting of the appeal to this court, and within fifteen days after the filing in this court of the apostles, and upon at least four days' notice to the adverse party or his attorney of record.

8.

NEW PLEADINGS—NEW TESTIMONY.

If leave be granted to make new allegations, pray different relief or interpose a new defense, the moving party shall, within ten days thereafter, serve such new pleading, duly verified, on the adverse party, who shall, if such pleading be a libel, within twenty days answer on oath.

If leave be given to take new testimony, the same may be taken and filed within thirty days after the entry of the order granting such leave, and the adverse party may take and file counter testimony within twenty days after such filing.

9.

NEW TESTIMONY—HOW TAKEN.

Such testimony shall be taken by deposition before the clerk of this court, or any United States commissioner, or any clerk of a district court of the United States, or any notary public upon reasonable notice, in writing, given to the opposite party or his attorney of record, either in this court or in the court below, which notice must state the name or names of the witness or witnesses and the time and place of taking his or their deposition; or by commission issued out of this court with interrogatories annexed. Upon sufficient cause shown, the court may grant an open commission.

10.

PRINTING NEW PLEADINGS AND TESTIMONY.

If new pleadings are filed or testimony taken in this court, the same shall also be printed and furnished by the clerk, as in the 23d General Rule provided.

11.

MOTIONS.

All motions shall be made upon at least four days' notice.

12.

EVIDENCE OF TIME.

The time specified in the foregoing rules for any proceeding may be extended by order of a judge of this court.

EQUITY RULES IN FORCE FEBRUARY 1, 1913, ANNOTATED.

(Index at end of Rules.)

EQUITY RULES IN FORCE FEBRUARY 1, 1913, ANNOTATED.

TABLE OF OLD EQUITY RULES SHOWING WHAT HAVE BEEN INCORPORATED AND WHAT OMITTED IN THE NEW EQUITY RULES.

Those marked with a star (*) are identical with the new rule indicated.

Old New

1— 1 par. 1.
2— 2 and see 6.
3— 1 par. 2.
4— 4–3–6.
5— 5.
6—Out.
7— 7* substantially.
8— 8.
9— 9*
10—11* substantially.
11—12.
12—12.
13—13*
14—14* substantially.
15—15*
16—Out—See 3.
17—Out—See 16 and 12.
18—16 and 17 and 58.
19—17.
20—25 par. 1.
21—25 pars. 1–2–3–5.
22—25 par. 4.
23—25 par. 5.
24—24.
25—Out.
26—21.
27—Out See 21.
28—28 and 19.
29—28 par. 2.
30—Out See 19.
31—Out See 29.
32—Out See 29.
33—Out See 29.
34—Out See 29.
35—Out See 29.
36—Out See 29.
37—Out See 29.
38—Out See 29.
39—Out See 29.
40—See 58.
41—Out See 58.
42—Out See 58.
43—Out See 58.
44—Out See 58.
45—Out See 31.
46—32* with time changed.
47—39.

Old New

48—38.
49—37.
50—41*
51—42*
52—43.
53—44.
54—40.
55—Out See 73.
56—45.
57—34.
58—35*
59—36.
60—Out See 19 and 30.
61—Abolished 33 and 21.
62—Out.
63—Out See 33.
64—Out See 33 and part 58.
65—Out.
66—Abolished 31.
67—See 58 and 46–49–51–52–53–47.
68—54.
69—55 and 47.
70—47 and 54.
71—Out.
72—Out See 30.
73—Out.
74—59.
75—60*
76—61*
77—62.
78—52 See 46.
79—63.
80—64*
81—65*
82—68.
83—66* with time changed.
84—67.
85—72.
86—71*
87—70*
88—69.
89—79.
90—Out See 79.
91—78*
92—10* substantially.
93—74.
94—27.

CORRESPONDING TABLE OF NEW RULES SHOWING FROM WHERE DRAWN IN THE OLD RULES AND WHAT ARE ENTIRELY NEW. THOSE MARKED WITH A STAR ARE IDENTICAL WITH THE OLD RULE.

New Old

Par. 1—1–1.
Par. 2—1–3.
2— 2.
3— new. See 4.
4— 4.
5— 5.
6— new.
7— 7* substantially.
8— pt. new. 8.
9— 9*
10—92* substantially.
11—10* substantially.
12—11 and 12.
13—13*
14—14* substantially.
15—15*
16—18 first part.
17—19.
18—new.
19—28, 29 and 60 supersedes 30.
20—new.
21—new. See 26, 27, 61.
22—new.
23—new.
24—partly new. 24.
25
Par. 1—20.
" 2—21.
" 3, new.
" 4—22 pt.
" 5—pt. 21 and 23.
26—new.
27—94.
28—28 1st pt. 29 1st pt.
29—new superseding 31 to 40.
30—new. See 60. Supersedes 72.
31—new superseding 45 and 66.
32—46* with time changed.
33—new superseding 61, 63, 64.
34—new superseding 57.
35—58*
36—59.
37—new superseding 49.
38—48.
39—47.
40—54.

New Old

41—50*
42—51*
43—52 and pt. new.
44—53.
45—new superseding 56.
46—abolishing 67, 78.
47—new, pt. 67, pt. 69, pt. 70.
48—new.
49—new, pt. 67.
50—new.
51—new—last pt. from pt. 67.
52—pt. new. 78 1st pt. 67 pt.
53—67 pt.
54—68 and 70 superseded.
55—new superseding 69.
56—new.
57—new.
58—new pt. 18 2nd pt. Supersedes 40, 41, 42, 43, 44, 64, 67.
59—74.
60—75*
61—76*
62—77.
63—79.
64—80*
65—81*
66—83* with time changed.
67—84.
68—82.
69—88.
70—87*
71—86*
72—85.
73—new superseding 55.
74—93.
75—new.
76—new.
77—new.
78—91*
79—89 supersedes 90.
80—new.
81—new.

EQUITY RULES IN FORCE

FEBRUARY 1, 1913, ANNOTATED.

EXPLANATORY NOTE.

Matter contained in parentheses followed by a number indicates that such matter is the same as the old rule of that number except where changes are indicated by *note* numbers above the line of the text of the rule. Thus the first part of rule 1 is identical with old rule 1 except the word "district" followed by note number "1" in the new rule was "circuit" in old rule 1. The second part of rule 1 in parentheses is the same as part of old rule 3, and the last part of rule 1 in parentheses is new, as indicated in the note below.

Rule 1. District court always open for certain purposes—Orders at chambers. (The *district* [1] court, as courts of equity, shall be deemed always open for the purpose of filing [2] any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules and other proceedings preparatory to the hearing, upon their merits, of all causes pending therein.) (1.)

(Any district judge may, upon reasonable notice to the parties, make, direct, and award, at chambers or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules and other proceedings,) (pt. 3) (whenever the same are not grantable of course, according to the rules and practice of the court.) (New.)

[1] Formerly "circuit."

[2] Omits "bills, answers, and other."

Drawn from old rule 1, Rose's Code, § 365, and part of old rule 3, Rose's Code, § 939; but last sentence of rule is new.

The rule is identical with § 9, Judicial Code, except omits "admiralty and" after "district courts," and before "as courts of equity."

Rule 2. Clerk's office always open, except, etc. The clerk's office shall be open during business hours on all days, except Sundays and legal holidays, and the clerk shall be in attendance for the purpose of receiving and disposing of all motions, rules, orders and other proceedings which are grantable of course.

Drawn from old rule 2, Rose's Code, § 604, which established the first Monday in the month as rule day. Rule day is now abolished. Motion day is provided for in rule 6, post.

Rule 3. Books kept by clerk and entries therein. The clerk shall keep a book known as "Equity Docket," in which he shall enter each suit, with a file number corresponding to the folio in the book. All papers and orders filed with the clerk in the suit, all process issued and returns made thereon, and all appearances, shall be noted briefly and chronologically in this book on the folio assigned to the suit and shall be marked with its file number.

The clerk shall also keep a book entitled "Order Book," in which shall be entered at length, in the order of their making, all orders made or passed by him as of course and also all orders made or passed by the judge in chambers.

He shall also keep an "Equity Journal," in which shall be entered all orders, decrees and proceedings of the court in equity causes in term time.

Separate and suitable indices of the Equity Docket, Order Book and Equity Journal shall be kept by the clerk under the direction of the court.

New.—Old rule 4 provided for an "Order Book." Otherwise this is a new rule. Supersedes old rule 16.

Rule 4. Notice of orders. Neither the noting of an order in the Equity Docket nor its entry in the Order Book shall of itself be deemed notice to the parties or their solicitors; and when an order is made without prior notice to, and in the absence of, a party, the clerk, unless otherwise directed by the court or judge, shall forthwith send a copy thereof, by mail, to such party or his solicitor and a note of such mailing shall be made in the Equity Docket, which shall be taken as sufficient proof of due notice of the order.

New.—Superseding old rule 4, which provided the entry in the Order Book was sufficient notice to the parties, except in cases where personal or other notice is specially required or directed. The part as to mailing copies is new.

Rule 5. Motions grantable of course by clerk. (All motions and applications in the clerk's office for the issuing of mesne process or final process to enforce and execute decrees; [1] for taking bills *pro confesso;* [2] and for other proceedings in the clerk's office which do not [3] require any allowance or order of the court or of a judge, shall be deemed motions and applications grantable of course by the clerk; but the same may be suspended, or altered, or rescinded by the judge [4] upon special cause shown.) (5, Rose's Code, § 942.)

[1] Omits "for filing bills, answers, pleas, demurrers and other pleadings; for making amendments to bills and answers."
[2] Omits "for filing exceptions."
[3] Omits "by the rules hereinafter described."
[4] Omits "of the court."

Rule 6. Motion day. Each district court shall establish regular times and places, not less than once each month, when motions requiring notice and hearing may be made and disposed of; but the judge may at any time and place, and on such notice, if any, as he may consider reasonable, make and direct all interlocutory orders, rulings and proceedings for the advancement, conduct and hearing of causes. If the public interest permits, the senior circuit judge of the circuit may dispense with the motion day during not to exceed two months in the year in any district.

New rule substituting "motion day" for the abolished "rule day."

Rule 7. Process, mesne and final. (The process of subpœna shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the [1] bill; and, unless otherwise provided in these rules or specially ordered by the court, a writ of attachment and, if the defendant cannot be found, a writ of sequestration, or a

writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court.) (7.)

[1] Omits "exigency of."

Rule 8. Enforcement of final decrees. (Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution, in the form used in the *district* [1] court in suits at common law in actions of assumpsit. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land or the delivering up of deeds or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound, without further service, to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the court, or a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found a writ of sequestration shall issue against his estate, upon the return of *non est inventus*, to compel obedience to the decree.) (8. Identical. Rose's Code, § 1096.) (If a mandatory order, injunction or decree for the specific performance of any act or contract be not complied with, the court or a judge, besides, or instead of, proceedings against the disobedient party for a contempt or by sequestration, may by order direct that the act required to be done, be done, so far as practicable, by some other person appointed by the court or judge, at the cost of the disobedient party, and the act, when so done, shall have like effect as if done by him.) (New.)

[1] Circuit.

Rule 9. Writ of assistance. (When any decree or order is for the delivery of possession, upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the clerk of the court.) (Identical 9. Rose's Code, § 1097.)

Rule 10. Decree for deficiency in foreclosures, etc. (In suits for the foreclosure of mortgages, *or the enforcement of other liens*, (new) a decree may be rendered for any balance that may be found due to the plaintiff over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in rule 8 when the decree is solely for the payment of money.) (Substantially. 92.)

Rule 11. Process in behalf of and against persons not parties. (Every person, not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, may enforce obedience to such order by the same process as if he were a party; and every person, not being a party,

against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such orders as if he were a party.[1]) (10.)

[1] The last three words of the old rule 10, Rose's Code, § 1098, "in the cause," are omitted.

Rule 12. Issue of subpœna—Time for answer. (Whenever a bill is filed, and not before, the clerk shall issue the process of subpœna thereon,) (11.) as of course, upon the application of the plaintiff, (which shall contain the names of the parties and be returnable into the clerk's office twenty days from the issuing thereof.) (New.) (At the bottom of the subpœna shall be placed a memorandum, that the defendant is required to file his answer or other defense in the clerk's office on or before the twentieth day after service, excluding the day thereof; otherwise the bill may be taken *pro confesso*. Where there are more than one defendant, a writ of subpœna may, at the election of the plaintiff, be sued out separately for each defendant, or a joint subpœna against all the defendants.) (12.)

This rule combines old rules 11 and 12, see Rose's Code, §§ 969, 970, the time for answering is changed because of the abolition of the rule day. Appearance day is abolished.

Rule 13. Manner of serving subpœna. (The service of all subpœnas shall be by delivering a copy thereof to the defendant personally, or by leaving a copy thereof at the dwelling house or usual place of abode of each defendant, with some adult person who is a member of or resident in the family.) (13. Identical.)

Rule 14. Alias subpœna. (Whenever any subpœna shall be returned not executed as to any defendant, the plaintiff shall be entitled to *other*[1] subpœnas[2] against such defendant, until due service is made.) (14, Rose's Code, § 972.)

[1] Changed from "another"
[2] Omits "*toties quoties.*"

Rule 15. Process, by whom served. (The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person specially appointed by the court or judge for that purpose, and not otherwise. In the latter case, the person serving the process shall make affidavit thereof.) (Identical 15, Rose's Code, § 973.)

Rule 16. Defendant to answer—Default—Decree pro confesso. (It shall be the duty of the defendant, unless the time shall be enlarged, for cause shown, by a judge of the court,[1] to file his answer[2] *or other defense* (new) to the bill in the clerk's office *within the time named in the subpœna as required by rule 12.*[3] In default thereof the plaintiff may, at his election, *take an order*

as of course [4] that the bill be taken *pro confesso;* and thereupon the cause shall be proceeded in *ex parte.*) (1st pt. 18, Rose's Code, § 977.)

[1] Omits "on motion for that purpose."
[2] Omits "plea, demurrer."
[3] Changes "on the rule next succeeding that of his appearance."
[4] Omits "enter an order ..... in the Order Book."

Rule 17. Decree pro confesso to be followed by final decree—Setting aside default. (When the bill is taken *pro confesso* the court may proceed to a *final* (new) decree at any time after the expiration of thirty days after the entry of the order [1] *pro confesso*, and such decree [2] shall be deemed absolute, unless the court shall, at the same term, set aside the same, or enlarge the time for filing the answer, upon cause shown upon motion and affidavit.[3] No such motion shall be granted, unless upon the payment of the costs of the plaintiff [4] up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall direct for the purpose of speeding the cause.) (19, Roses' Code, § 978.)

[1] To take the bill.
[2] Rendered
[3] Of the defendant.
[4] In the suit

Rule 18. Pleadings—Technical forms abrogated. Unless otherwise prescribed by statute or these rules the technical forms of pleadings in equity are abolished.

New.

Rule 19. Amendments generally. The court may at any time, in furtherance of justice, upon such terms as may be just, permit any process, proceeding, pleading or record to be amended, or material supplemental matter to be set forth in an amended or supplemental pleading. The court, at every stage of the proceeding, must disregard any error or defect in the proceedings which does not affect the substantial rights of the parties. (28, 29, 60, Rose's Code, §§ 956, 957.)

See rule 28, post.
Drawn from old rules 28, 29, and 60, which it supersedes. It also supersedes old rule 30.

Rule 20. Further and particular statement in pleading may be required. A further and better statement of the nature of the claim or defense, or further and better particulars of any matter stated in any pleading, may in any case be ordered, upon such terms, as to costs and otherwise, as may be just.

New rule, drawn from order XIX, rule 7, English chancery practice.
As to object of particulars, see Speeding v. Fitzpatrick, 38 C. D. 413; Milbank v. Milbank, 1 Ch. 285.

Rule 21. Scandal and impertinence. The right to except to bills, answers, and other procedings for scandal or impertinence shall not obtain, but the court may, upon motion or its own initiative, order any redundant, impertinent or scandalous matter striken out, upon such terms as the court shall think fit.

This is a new rule, and abolishes the practice of taking exceptions for scandal and impertinence under old rules, 26, 27, 61, Rose's Code, § 954. See Rule 33, post.

Rule 22. Action at law erroneously begun as suit in equity—Transfer. If at any time it appear that a suit commenced in equity should have been brought as an action on the law side of the court, it shall be forthwith transferred to the law side and be there proceeded with, with only such alteration in the pleadings as shall be essential.

New. Same as English practice under judicature act 1875.

Rule 23. Matters ordinarily determinable at law, when arising in suit in equity to be disposed of therein. If in a suit in equity a matter ordinarily determinable at law arises, such matter shall be determined in that suit according to the principles applicable, without sending the case or question to the law side of the court.

New.

Rule 24. Signature of counsel. Every bill or other pleading shall be signed individually by one or more solicitors of record, and such signatures shall be considered as a certificate by each solicitor that he has read the pleading so signed by him; that upon the instructions laid before him regarding the case there is good ground for the same; that no scandalous matter is inserted in the pleading; and that it is not interposed for delay. (24. Partly New. Rose's Code, § 949.)

Rule 25. Bill of complaint—Contents. Hereafter it shall be sufficient that a bill in equity shall contain, in addition to the usual caption:

First, (the full name, when known, of each plaintiff and defendant, and the citizenship and residence of each party. If any party be under any disability that fact shall be stated.) (From 20, Rose's Code, § 944.)

Second, (a short and plain statement of the grounds upon which the court's jurisdiction depends.) (From 21, Rose's Code, §§ 945, 946.)

Third, (a short and simple statement of the ultimate facts upon which the plaintiff asks relief, omitting any mere statement of evidence.) (New.)

Fourth, (if there are persons other than those named as defendants who appear to be proper parties, the bill should state why they are not made parties—as that they are not within the jurisdiction of the court, or cannot be made parties without ousting the jurisdiction.) (22. Partly, Rose's Code, § 947.)

Fifth, a statement of and prayer for any special relief pending the suit

or on final hearing, which may be stated and sought in alternative forms. If special relief pending the suit be desired the bill should be verified by the oath of the plaintiff, or someone having knowledge of the facts upon which such relief is asked. (From last pt. 21 and 23, Rose's Code, §§ 945, 946, 948.)

Rule 26. Joinder of causes of action. The plaintiff may join in one bill as many causes of action, cognizable in equity, as he may have against the defendant. But when there is more than one plaintiff, the causes of action joined must be joint, and if there be more than one defendant the liability must be one asserted against all of the material defendants, or sufficient grounds must appear for uniting the causes of action in order to promote the convenient administration of justice. If it appear that any such cause of action cannot be conveniently disposed of together, the court may order separate trials.

New.

Rule 27. Stockholder's bill. Every bill brought by one or more stockholders in a corporation against the corporation and other parties, founded on rights which may properly be asserted by the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him since by operation of law, and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the share holders, and the causes of his failure to obtain such action,) (94) or the reasons for not making such effort.

New.

Rule 28. Amendment of bill as of course. (The plaintiff may, as of course, amend his bill before the defendant has responded thereto, but if such amendment be filed after any copy has issued from the clerk's office, the plaintiff at his own cost shall furnish to the solicitor of record of each opposing party a copy of the bill as amended, unless otherwise ordered by the court or judge.) (From 28, 1st part.) Rose's Code, § 956.

After pleading filed by any defendant, plaintiff may amend only by consent of the defendant or leave of the court or judge. (From 29, 1st part, Rose's Code, § 957.)

This rule, with rule 18 above, makes several changes in the practice as to amendments.

Rule 29. Defenses—How presented. Demurrers and pleas are abolished. Every defense in point of law arising upon the face of the bill, whether for misjoinder, nonjoinder, or insufficiency of fact to constitute a valid cause of action in equity, which might heretofore have been made by demurrer or plea, shall be made by motion to dismiss or in the answer; and every

such point of law going to the whole or a material part of the cause or causes of action stated in the bill may be called up and disposed of before final hearing at the discretion of the court. Every defense heretofore presentable by plea in bar or abatement shall be made in the answer and may be separately heard and disposed of before the trial of the principal case in the discretion of the court. If the defendant move to dismiss the bill or any part thereof, the motion may be set down for hearing by either party upon five days' notice, and, if it be denied, answer shall be filed within five days thereafter or a decree *pro confesso* entered.

New.
Does away with old rules 3 to 39 inclusive.

Rule 30. Answer—Contents—Counterclaim. The defendant in his answer shall in short and simple terms set out his defense to each claim asserted by the bill, omitting any mere statement of evidence and avoiding any general denial of the averments of the bill, but specifically admitting or denying or explaining the facts upon which the plaintiff relies, unless the defendant is without knowledge, in which case he shall so state, such statement operating as a denial. Averments other than of value or amount of damage, if not denied, shall be deemed confessed, except as against an infant, lunatic or other person *non compos* and not under guardianship, but the answer may be amended, by leave of the court or judge, upon reasonable notice, so as to put any averment in issue, when justice requires it. The answer may state as many defenses, in the alternative, regardless of consistency, as the defendant deems essential to his defense.

The answer must state in short and simple form any counterclaim arising out of the transaction which is the subject matter of the suit, and may, without cross-bill, set out any set-off or counterclaim against the plaintiff which might be the subject of an independent suit in equity against him, and such set-off or counterclaim, so set up, shall have the same effect as a cross-bill, so as to enable the court to pronounce a final judgment in the same suit both on the original and cross-claims. New. Supersedes old rules 60 and 72. Rose's Code, § 1053.

Rule 31. Reply—When required—When cause at issue. Unless the answer assert a set-off or counterclaim, no reply shall be required without special order of the court of judge, but the cause shall be deemed at issue upon the filing of the answer, and any new or affirmative matter therein shall be deemed to be denied by the plaintiff. If the answer include a set-off or counterclaim the party against whom it is asserted shall reply within ten days after the filing of the answer, unless a longer time be allowed by the court or judge. If the counterclaim is one which affects the rights of other defendants they or their solicitors shall be served with a copy of the same within ten days from the filing thereof, and ten days shall be accorded to such defendants for filing a reply. In default of a reply, a decree *pro confesso* on the counterclaim may be entered as in default of an answer to the bill.

New. Supersedes old rules 45 and 66.

Rule 32. Answer to amended bill. (In every case where an amendment to the bill shall be made after answer filed, the defendant shall put in a new or supplemental answer *within ten days* (new) after that on which the amendment or amended bill is filed, unless the time is enlarged or otherwise ordered by a judge of the court; and upon his default, the like proceedings may be had as in case of an omission to put in an answer.) (46, Rose's Code, § 1007.)

Rule day being abolished, the only change of language in old rule 46 was that defining time.

Rule 33. Testing sufficiency of defense. Exceptions for insufficiency of an answer are abolished. But if an answer set up an affirmative defense, set-off or counterclaim, the plaintiff may, upon five days' notice, or such further time as the court may allow, test the sufficiency of the same by motion to strike out. If found insufficient but amendable the court may allow an amendment upon terms, or strike out the matter.

New, superseding old rules 61, 63, 64.

Rule 34. Supplemental pleading. (Upon application of either party the court or judge, may, upon reasonable notice and such terms as are just, permit him to file and serve a supplemental pleading, alleging material facts occurring after his former pleading, or of which he was ignorant when it was made, including the judgment or decree of a competent court rendered after the commencement of the suit determining the matters in controversy or a part thereof.) (New.)

New. See old rule 57. Rose's Code, § 961.

Rule 35. Bills of revivor and supplemental bills—Form. (It shall not be necessary in any bill of revivor or supplemental bill to set forth any of the statements in the original suit, unless the special circumstances of the case may require it.) (58. Identical, Rose's Code, § 962.)

Rule 36. Officers before whom pleadings verified. Every pleading which is required to be sworn to by statute, or these rules, may be verified (before any justice or judge of any court of the United States, or of any state or territory, or of the District of Columbia, or any clerk of any court of the United States, or of any territory, or of the District of Columbia, or any notary public.) (59. Omitting commissioners and masters in chancery.)

Rule 37. Parties generally—Intervention. Every action shall be prosecuted in the name of the real party in interest, but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute, may sue in his own name without joining

with him the party for whose benefit the action is brought. All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs, and any person may be made a defendant who has or claims an interest adverse to the plaintiff. Any person may at any time be made a party if his presence is necessary or proper to a complete determination of the cause. Persons having a united interest must be joined on the same side as plaintiffs or defendants, but when anyone refuses to join, he may for such reason be made a defendant.

Anyone claiming an interest in the litigation may at any time be permitted to assert his right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding.

New, superseding 49.

Rule 38. Representatives of class. When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole.

This is a new rule, drawn from old rule 48. Coann v. Atlanta Factory Co. 14 Fed. Rep. 4; American Steel Co. v. Wire Drawers' Union, 90 Fed. 598.

Rule 39. Absence of persons who would be proper parties. (In all cases where it shall appear to the court that persons, who might otherwise be deemed [1] proper parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may, in its discretion, proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.) (47, Rose's Code, § 1019.

[1] Omits "necessary or."
See § 50, Judicial Code.

Rule 40. Nominal parties. (Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party, upon service of the subpœna upon him, need not appear and answer the bill, unless the plaintiff specially requires him to do so by the prayer,[1] but he may appear and answer at his option; and if he does not appear and answer he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer he shall be entitled to the costs of all the proceedings against him, unless the court shall otherwise direct.) (54, Rose's Code, § 976.

[1] Omits "of his bill."

Rule 41. Suit to execute trusts of will—Heir as party. (In suits to execute the trusts of a will, it shall not be necessary to make the heir at law a

party; but the plaintiff shall be at liberty to make the heir at law a party where he desires to have the will established against him.) (50 Identical, Rose's Code, § 1022.)

Rule 42. Joint and several demands. (In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the court as parties to a suit concerning such demand all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable. (51. Identical, Rose's Code, § 1023.)

Rule 43. Defect of parties—Resisting objection. (Where the defendant shall by his answer suggest that the bill of complaint is defective for want of parties, the plaintiff may,[1] within fourteen days after answer filed, set down the cause for argument as a motion upon that objection only,[2] and where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order[3] to amend his bill by adding parties; but the court[4] shall be at liberty to dismiss the bill,) (52, Rose's Code, § 1025.) (or to allow an amendment on such terms as justice may require.) (New.)

[1] Omitted words, "shall be at liberty."
[2] "And the purpose for which the same is set down shall be notified by an entry, to be made in the clerk's Order Book in form or to the effect following (that is to say): 'Set down on the defendant's objection for want of parties.'"
[3] "for liberty."
[4] "if it thinks fit."

Rule 44. Defect of parties—Tardy objection. (If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties, not having by[1] motion or answer taken the objection and therein specified by name or description the parties to whom the objection applies, the court shall[2] be at liberty to make a decree saving the rights of the absent parties.) (53, Rose's Code 1026.)

[1] Word "motion" substituted for "plea or answer."
[2] "(if it shall think fit)" omitted.

Rule 45. Death of party—Revivor. In the event of the death of either party the court may, in a proper case, upon motion, order the suit to be revived by the substitution of the proper parties. If the successors or representatives of the deceased party fail to make such application within a reasonable time, then any other party may, on motion, apply for such relief, and the court, upon any such motion, may make the necessary orders for notice to the parties to be substituted and for the filing of such pleadings or amendments as may be necessary.

New, superseding 56.

Rule 46. Trial—Testimony usually taken in open court—Rulings on objections to evidence. In all trials in equity the testimony of witnesses shall be taken orally in open court, except as otherwise provided by statute or these rules. The court shall pass upon the admissibility of all evidence offered as in actions at law. When evidence is offered and excluded, and the party against whom the ruling is made excepts thereto at the time, the court shall take and report so much thereof, or make such a statement respecting it, as will clearly show the character of the evidence, the form in which it was offered, the objection made, the ruling, and the exception. If the appellate court shall be of opinion that the evidence should have been admitted, it shall not reverse the decree unless it be clearly of opinion that material prejudice will result from an affirmance, in which event it shall direct such further steps as justice may require.

New, abolishing the practice under 67.

Rule 47. Depositions—To be taken in exceptional instances. The court, upon application of either party, when allowed by statute,[1] or for good and exceptional cause for departing from the general rule, to be shown by affidavit, may permit the deposition of named witnesses, to be used before the court or upon a reference to a master, to be taken before an examiner or other named officer, upon the notice and terms specified in the order. All depositions taken under a statute, or under any such order of the court, shall be taken and filed as follows, unless otherwise ordered by the court or judge for good cause shown: Those of the plaintiff within sixty days from the time the cause is at issue; those of the defendant within thirty days from the expiration of the time for the filing of plaintiff's depositions; and rebutting depositions by either party within twenty days after the time for taking original depositions expires.

New. See last paragraph under 67, headed "*Court may assign the time*," 69, and 70.

[1] See rule 54, post.

Rule 48. Testimony of expert witnesses in patent and trademark cases. In a case involving the validity or scope of a patent or trademark, the district court may, upon petition, order that the testimony in chief of expert witnesses, whose testimony is directed to matters of opinion, be set forth in affidavits and filed as follows: Those of the plaintiff within forty days after the cause is at issue; those of the defendant within twenty days after plaintiff's time has expired; and rebutting affidavits within fifteen days after the expiration of the time for filing original affidavits. Should the opposite party desire the production of any affiant for cross-examination, the court or judge shall, on motion, direct that said cross-examination and any re-examination take place before the court upon the trial, and unless the affiant is produced and submits to cross-examination in compliance with such direction, his affidavit shall not be used as evidence in the cause.

New. The probabilities are that this rule will make little change in patent

and trademark cases, and that rule 46 will not be applied to these cases. Probably testimony will be largely taken as formerly, by resort to the first clause in rule 47, allowing depositions to be taken "for good and exceptional cause."

Rule 49. Evidence taken before examiners, etc. All evidence offered before an examiner or like officer, together with any objections, shall be saved and returned into the court. Depositions, whether upon oral examination before an examiner or like officer or otherwise, shall be taken upon questions and answers reduced to writing, or in the form of narrative, and the witness shall be subject to cross and re-examination.

New. See 67, under heading "Proceedings."

Rule 50. Stenographer—Appointment—Fees. When deemed necessary by the court or officer taking testimony, a stenographer may be appointed who shall take down testimony in shorthand and, if required, transcribe the same. His fee shall be fixed by the court and taxed ultimately as costs. The expense of taking a deposition, or the cost of a transcript, shall be advanced by the party calling the witness or ordering the transcript.

New.

Rule 51. Evidence taken before examiners, etc. Objections to the evidence, before an examiner or like officer, shall be in short form, stating the grounds of objection relied upon, but no transcript filed by such officer shall include argument or debate. The testimony of each witness, after being reduced to writing, (shall be read over to or by him,[1] and shall be signed by him in the presence of the officer: [2] *Provided*, That if the witness shall refuse to sign his [3] deposition so taken, the officer [4] shall sign the same, stating upon the record the reasons, if any, assigned by the witness for such refusal.[5] Objection to any question or questions shall be noted by the officer upon the deposition, but he shall not have power to decide on the competency or materiality or relevancy of the questions. The court shall have power, and it shall be its duty, to deal with the costs of incompetent and immaterial or irrelevant depositions, or parts of them, as may be just.

Substantially 67, last pt., under heading "Proceedings."

[1] "Him," for "the witness."
[2] "Officer" instead of "of the parties or counsel, or such of them as may attend."
[3] "His" instead of "the said"
[4] "Officer" for "examiner"
[5] Omitted "and the examiner may upon all examinations state any special matters to the court as he shall see fit."

Rule 52. Attendance of witnesses before commissioner, master or examiner. (Witnesses who live within the district, *and whose testimony may be taken out of court by these rules*, (new) may be summoned to appear before a commissioner appointed to take testimony, or before a master or examiner appointed in any cause, by subpœna in the usual form, which may be issued

by the clerk in blank and filled up by the party praying the same, or by the commissioner, master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in court; and if any witness shall refuse to appear or give evidence it shall be deemed a contempt of the court, which being certified to the clerk's office by the commissioner, master, or examiner, an attachment may issue thereupon by order of the court or of any judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in, the court.) (78, 1st part, Rose's Code, § 1057.)

(In case of refusal of witnesses to attend or be sworn or to answer any question put by the *commissioner, master or* (new) examiner or by counsel or solicitor, the same practice shall be adopted as is now practiced with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories.) (67, pt. headed "*Compulsory attendance of witnesses.*")

Rule 53. Notice of taking testimony before examiner, etc. (Notice shall be given by the respective counsel or parties to the opposite counsel or parties of the time and place of examination before an examiner or like officer for such reasonable time as the *court or officer*[1] may fix by order in each case.) (67, pt. headed "*Notice of time and place.*")

[1] "Court or officer" for "examiner."

Rule 54. Deposition under Rev. Stat. §§ 863, 865, 866, 867—Cross-examination. After a cause is at issue, depositions may be taken as provided by §§ 863, 865, 866 and 867, Revised Statutes. But if in any case no notice has been given the opposite party of the time and place of taking the deposition, he shall, upon application and notice, be entitled to have the witness examined *orally before the court,* (new) or to a cross-examination before an examiner or like officer, or a new deposition taken with notice, as the court or judge under all the circumstances shall order. (68 and 70 superseded, Rose's Code, § 1052.)

Rule 55. Deposition deemed published when filed. Upon the filing of any deposition or affidavit taken under these rules or any statute, it shall be deemed published, unless otherwise ordered by the court.

New, superseding 69.

Rule 56. On expiration of time for depositions, case goes on trial calendar. After the time has elapsed for taking and filing depositions under these rules, the case shall be placed on the trial calendar. Thereafter no further testimony by deposition shall be taken except for some strong reason shown by affidavit. In every such application the reason why the testimony of the witness cannot be had orally on the trial, and why his deposition has not been before taken, shall be set forth, together with the testimony which it is expected the witness will give.

New.

Rule 57. Continuances. After a cause shall be placed on the trial calendar it may be passed over to another day of the same term, by consent of counsel or order of the court, but shall not be continued beyond the term save in exceptional cases by order of the court upon good cause shown by affidavit and upon such terms as the court shall in its discretion impose. Continuances beyond the term by consent of the parties shall be allowed on condition only that a stipulation be signed by counsel for all the parties and that all costs incurred theretofore be paid. Thereupon an order shall be entered dropping the case from the trial calendar, subject to reinstatement within one year upon application to the court by either party, in which event it shall be heard at the earliest convenient day. If not so reinstated within the year, the suit shall be dismissed without prejudice to a new one.

New.

Rule 58. Discovery—Interrogatories—Inspection and production of documents—Admission of execution or genuineness. The plaintiff at any time after filing the bill and not later than twenty-one days after the joinder of issue, and the defendant at any time after filing his answer and not later than twenty-one days after the joinder of issue, and either party at any time thereafter by leave of the court or judge, may file interrogatories in writing for the discovery by the opposite party or parties of facts and documents material to the support or defense of the cause, with a note at the foot thereof stating which of the interrogatories each of the parties is required to answer. But no party shall file more than one set of interrogatories to the same party without leave of the court or judge.

If any party to the cause is a public or private corporation, any opposite party may apply to the court or judge for an order allowing him to file interrogatories to be answered by any officer of the corporation, and an order may be made accordingly for the examination of such officer as may appear to be proper upon such interrogatories as the court or judge shall think fit.

Copies shall be filed for the use of the interrogated party and shall be sent by the clerk to the respective solicitors of record, or to the last known address of the opposite party if there be no record solicitor.

Interrogatories shall be answered, and the answers filed in the clerk's office, within fifteen days after they have been served, unless the time be enlarged by the court or judge. Each interrogatory shall be answered separately and fully and the answers shall be in writing, under oath, and signed by the party or corporate officer interrogated. Within ten days after the service of interrogatories, objections to them, or any of them, may be presented to the court or judge, with proof of notice of the purpose so to do, and answers shall be deferred until the objections are determined, which shall be at as early a time as is practicable. In so far as the objections are sustained, answers shall not be required.

(The court or judge, upon motion and reasonable notice, may make all

such orders as may be appropriate to enforce answers to interrogatories or to effect the inspection or production of documents in the possession of either party and containing evidence material to the cause of action or defense of his adversary. Any party failing or refusing to comply with such an order shall be liable to attachment, and shall also be liable, if a plaintiff, to have his bill dismissed, and, if a defendant, to have his answer stricken out and be placed in the same situation as if he had failed to answer.) (See 2nd pt. 18, Rose's Code, § 977.)

By a demand served ten days before the trial, either party may call on the other to admit in writing the execution or genuineness of any document, letter or other writing, saving all just exceptions; and if such admission be not made within five days after such service, the costs of proving the document, letter or writing shall be paid by the party refusing or neglecting to make such admission, unless at the trial the court shall find that the refusal or neglect was reasonable.

Supersedes 40, 41, 42, 43, 44, 64 and 2d pt. 18. Drawn from order XXXI., English practice.

Rule 59. Reference to master—Exceptional, not usual. Save in matters of account, a reference to a master shall be the exception, not the rule, and shall be made only upon a showing that some exceptional condition requires it. (When such a reference is made, the party at whose instance or for whose benefit it is made shall cause the order of reference to be presented to the master for a hearing[1] *within twenty days* (new) succeeding the time when the reference was made, unless a longer time be specially granted by the court or judge; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the costs of the party procuring the reference.) (74, Rose's Code, 1070.)

[1] Omitting "on or before next rule day."

Rule 60. Proceedings before master. (Upon every such reference, it shall be the duty of the master, as soon as he reasonably can after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties, or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed *ex parte*, or, in his descretion, to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay, and either party shall be at liberty to apply to the court, or a judge thereof, for an order to the master to speed the proceedings and to make his report, and to certify to the court or judge the reason for any delay.) (Identical 75, Rose's Code, § 1071.)

Rule 61. Master's report—Documents identified but not set forth. In the reports made by the master to the court, no part of any state of facts, account, charge, affidavit, deposition, examination, or answer brought in or used before him shall be stated or recited. But such state of facts, account, charge, affidavit, deposition, examination, or answer shall be identified, and

referred to, so as to inform the court what state of facts, account, charge, affidavit, deposition, examination, or answer were so brought in or used.) (Identical 76, Rose's Code, § 1078.)

Rule 62. Powers of master. (The master shall regulate all the proceedings in every hearing before him, upon every reference; and he shall have full authority to examine the parties in the cause, upon oath, touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and other documents applicable thereto; and also to examine on oath, *viva voce*, all witnesses produced by the parties before him, *or by deposition, according to the acts of Congress, or otherwise, as here provided;*[1] and also to direct the mode in which the matters requiring evidence shall be proved before him; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof and the rights of the parties.) (77. Rose's Code, § 1072.)

[1] Formerly read "and to order the examination of other witnesses to be taken under commission to be issued upon his certificate from the clerk's office, or by deposition, according to acts of Congress or otherwise, as hereinafter provided."

See Foote v. Silsby, 3 Blatchf. 507; Consolidated Fastener Co. v. Columbian Co. 85 Fed. 54; Bate Refrigerator Co. v. Gillette, 28 Fed. 673; White v. Railroad Co. 79 Fed. 113; Deitch v. Staub, 115 Fed. 309; Welling v. La Baw, 32 Fed. 293; Lull v. Clark, 20 Fed. 454.

Rule 63. Form of accounts before master. (All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties who shall not be satisfied with the account so brought in shall be at liberty to examine the accounting party *viva voce*, or upon interrogatories,[1] as the master shall driect.) (79 Rose's Code, § 1073.)

[1] Omitted "in the master's office, or by deposition."

Rule 64. Former deposition, etc., may be used before master. (All affidavits, depositions and documents which have been previously made, read, or used in the court upon any proceeding in any cause or matter may be used before the master.) (Identical 80 Rose's Code, § 1074.)

Rule 65. Claimants before master examinable by him. (The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or *viva voce*, or in both modes, as the nature of the case may appear to him to require. The evidence upon such examinations shall be taken down by the master, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the court if necessary.) (Identical 81 Rose's Code, § 1075.)

Rule 66. Return of master's report—Exceptions—Hearing. (The master, as soon as his report is ready, shall return the same into the clerk's office and the day of the return shall be entered by the clerk in the Equity Docket.

The parties shall have *twenty days*[1] from the time of the filing of the report to file exceptions thereto, and if no exceptions are within that period filed by either party, the report shall stand confirmed. If exceptions are filed, they shall stand for hearing before the court, if then in session, or, if not, at the next sitting held thereafter, by adjournment or otherwise.) (83. Rose's Code, §§ 1077, 1079.)

[1] Formerly "one month."

Rule 67. Costs on exceptions to master's report. (In order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled, shall, for every exception overruled, pay *five dollars* (new) costs to the other party, and for every exception allowed shall be entitled to the *same*[1] costs.) (84) Rose's Code, § 1080.

[1] "Omitted."

Rule 68. Appointment and compensation of masters. (The *district*[1] courts may appoint standing masters in chancery in their respective districts (*a majority of all*[2] the judges thereof concurring in the appointment), and they may also appoint a master *pro hac vice* in any particular case. The compensation to be allowed to every master[3] shall be fixed by the district[1] court, in its discretion, having regard to all the circumstances thereof, and the compensation shall be charged upon and borne by such of the parties in the cause as the court shall direct. The master shall not retain his report as security for his compensation; but when the compensation is allowed by the court, he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if, upon notice thereof, he does not pay it within the time prescribed by the court.) (82. Rose's Code, §§ 690, 1069.)

[1] Formerly "circuit."
[2] Formerly "both."
[3] Omitted "in chancery for his services in any particular case."

Rule 69. Petition for rehearing. (Every petition for a rehearing shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party or by some other person. No rehearing shall be granted after the term at which the final decree of the court shall have been entered and recorded, if an appeal lies to the *circuit court of appeals* (new) or the Supreme Court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the court, in the discretion of the court.) (88. Rose's Code, § 1094.)

Identical with old rule 88, with the addition of the words, "circuit court of appeals."

See Giant Powder Co. v. Cal. Powder Co. 5 Fed. 197; McLeod v. New Albany, 66 Fed. 378; Brook v. Railroad Co. 102 U. S. 107, 26 L. ed. 91.

Rule 70. Suits by or against incompetents. (Guardian *ad litem* to defend a suit may be appointed by the court, or by any judge thereof, for infants or other persons who are under guardianship, or otherwise incapable of suing for themselves. All infants and other persons so incapable may sue by their guardians, if any, or by their *prochein ami;* subject, however, to such orders as the court or judge may direct for the protection of infants and other persons.) (87. Identical, Rose's Code, §§ 1024, 1025.)

Rule 71. Form of decree. (In drawing up decrees and orders, neither the bill, nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin, in substance, as follows: "This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, *viz.*" (Here insert the decree or order.) (86 Identical, Rose's Code, § 1090.)

Rule 72. Correction of clerical mistakes in orders and decrees. (Clerical mistakes in decrees or decretal orders, or errors arising from any accidental slip or omission, may, at any time before[1] *the close of the term at which final decree is rendered,* (new) be corrected by order of the court or a judge thereof, upon petition, without the form or expense of a rehearing.) (85 Rose's Code, § 1092.)

[1] Instead of "an actual enrolment thereof."

Rule 73. Preliminary injunctions and temporary restraining orders. No preliminary injunction shall be granted without notice to the opposite party. Nor shall any temporary restraining order be granted without notice to the opposite party, unless it shall clearly appear from specific facts, shown by affidavit or by the verified bill, that immediate and irreparable loss or damage will result to the applicant before the matter can be heard on notice. In case a temporary restraining order shall be granted without notice, in the contingency specified, the matter shall be made returnable at the earliest possible time, and in no event later than ten days from the date of the order, and shall take precedence of all matters, except older matters of the same character. When the matter comes up for hearing the party who obtained the temporary restraining order shall proceed with his application for a preliminary injunction, and if he does not do so the court shall dissolve his temporary restraining order. Upon two days notice to the party obtaining such temporary restraining order, the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require. Every temporary restraining order shall be forthwith filed in the clerk's office.

New, changing the practice under 55.

Rule 74. Injunction pending appeal. (When an appeal from a final decree in an equity suit granting or dissolving an injunction is allowed by a jus-

tice or a judge who took part in the decision of the cause he may, in his discretion, at the time of such allowance make an order suspending, modifying, *or restoring* (new) the injunction during the pendency of the appeal upon such terms as to bond or otherwise as he may consider proper for the security of the rights of the opposite party.) (93 Rose's Code, § 2022.)

Rule 75. Record on appeal—Reduction and preparation. In case of appeal:

(*a*) It shall be the duty of the appellant or his solicitor to file with the clerk of the court from which the appeal is prosecuted, together with proof or acknowledgment of service of a copy on the appellee or his solicitor, a precipe which shall indicate the portions of the record to be incorporated into the transcript on such appeal. Should the appellee or his solicitor desire additional portions of the record incorporated into the transcript, he shall file with the clerk of the court his precipe also within 10 days thereafter, unless the time shall be enlarged by the court or a judge thereof, indicating such additional portions of the record desired by him.

(*b*) The evidence to be included in the record shall not be set forth in full, but shall be stated in simple and condensed form, all parts not essential to the decision of the questions presented by the appeal being omitted and the testimony of witnesses being stated only in narrative form, save that if either party desires it, and the court or judge so directs, any part of the testimony shall be reproduced in the exact words of the witness. The duty of so condensing and stating the evidence shall rest primarily on the appellant, who shall prepare his statement thereof and lodge the same in the clerk's office for the examination of the other parties at or before the time of filing his precipe under paragraph (*a*) of this rule. He shall also notify the other parties or their solicitors of such lodgment and shall name a time and place when he will ask the court or judge to approve the statement, the time so named to be at least 10 days after such notice. At the expiration of the time named or such further time as the court or judge may allow, the statement, together with any objections made or amendments proposed by any party, shall be presented to the court or the judge, and if the statement be true, complete, and properly prepared, it shall be approved by the court or judge, and if it be not true, complete, or properly prepared, it shall be made so under the direction of the court or judge and shall then be approved. When approved it shall be filed in the clerk's office and become a part of the record for the purposes of the appeal.

(*c*) If any difference arise between the parties concerning directions as to the general contents of the record to be prepared on the appeal, such difference shall be submitted to the court or judge in conformity with the provisions of paragraph (*b*) of this rule and shall be covered by the directions (which the court or judge may give on the subject.)

New.

Rule 76. Record on appeal—Reduction and preparation—Costs—Correction of omissions. (In preparing the transcript on an appeal, especial care shall

be taken to avoid the inclusion of more than one copy of the same paper and to exclude the formal and immaterial parts of all exhibits, documents and other papers included therein; and for any infraction of this or any kindred rule the appellate court may withold or impose costs as the circumstances of the case and the discouragement of like infractions in the future may require. Costs for such an infraction may be imposed upon offending solicitors as well as parties.

If, in the transcript, anything material to either party be omitted by accident or error, the appellate court, on a proper suggestion or its own motion, may direct that the omission be corrected by a supplemental transcript.)

(New.)

Rule 77. Record on appeal—Agreed statement. (When the questions presented by an appeal can be determined by the appellate court without an examination of all the pleadings and evidence, the parties, with the approval of the district court or the judge thereof, may prepare and sign a statement of the case showing how the questions arose and were decided in the district court and setting forth so much only of the facts alleged and proved, or sought to be proved, as is essential to a decision of such questions by the appellate court. Such statement, when filed in the office of the clerk of the district court, shall be treated as superseding, for the purposes of the appeal, all parts of the record other than the decree from which the appeal is taken, and, together with such decree, shall be copied and certified to the appellate court as the record on appeal.)

New.

Rule 78. Affirmation in lieu of oath. (Whenever under these rules an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof make solemn affirmation to the truth of the facts stated by him.) (91 Identical, Rose's Code, § 938.)

Rule 79. Additional rules by district court. With the concurrence of a majority of the circuit judges for the circuit. the district courts may make any other and further rules and regulations for the practice, proceedings and process, mesne and final, in their respective districts, not inconsistent with the rules hereby prescribed,[1] and from time to time alter and amend the same. (89. Rose's Code, § 806.)

[1] Omitted "in their discretion."
Supersedes old rule 90.

Rule 80. Computation of time—Sundays and holidays. When the time prescribed by these rules for doing any act expires on a Sunday or legal holiday, such time shall extend to and include the next succeeding day that is not a Sunday or legal holiday.

New.

Rule 81. These rules effective February 1, 1913—Old rules abrogated. These rules shall be in force on and after February 1, 1913, and shall govern all proceedings in cases then pending or thereafter brought, save that where in any then pending cause an order has been made or act done which cannot be changed without doing substantial injustice, the court may give effect to such order or act to the extent necessary to avoid any such injustice.

All rules theretofore prescribed by the Supreme Court, regulating the practice in suits in equity, shall be abrogated when these rules take effect.

New.

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